United States Court of Appeals

for the Second Circuit

APPENDIX

74-1023

B P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

1050 TENANTS CORP., HERBERT SALTZMAN
and JOAN SALTZMAN,

Plaintiffs-Appellees,

against

PETER JAKOBSON, JOHN R. JAKOBSON, ARTHUR D. EMIL
and LAWRENCE A. KOBRIN,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570

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FOR THE SOUTHERN DISTRICT OF NEW YORK

Docket Entries.

DATE FILED	PROCEEDINGS
May 24, 1972	Complaint, summons issued.
May 24, 1972	Order permitting the plaintiffs to serve the summons and complaint upon defendants.
May 30, 1972	Summons with proof of service.
July 18, 1972	Notice of deposition of defendants.
July 28, 1972	Stipulation and order adjourning depositions as indicated. So ordered. Frankel J.
August 9, 1972	Answer
September 8, 1972	Defendants notice of motion to dismiss complaint.
September 8, 1972	Defendants memorandum of law in support of motion to dismiss the complaint.

Docket Entries.

Date Filed	Proceedings
September 8, 1972	Order to show cause seeking a stay of defendants' depositions. Gagliardi, J.
September 8, 1972	Defendants' memorandum of law in support of the order to show cause.
September 14, 1972	Affidavit of Martin I. Kaminsky in opposition to the motion for a stay.
September 15, 1972	Affidavit of Herbert Saltzman in opposition to motion to dismiss.
September 15, 1972	Memorandum endorsed by Gagliardi, J. denying defendants' motion for a stay.
September 15, 1972	Plaintiffs memorandum of law in opposition to motion to dismiss.
March 7, 1973	Defendants' request to plaintiffs for production of documents.
March 7, 1973	Defendants' interrogatories to plaintiffs (first series).
October 11, 1973	Opinion of District Court, #39909 denying defendants motion to dismiss.
October 12, 1973	Defendants reply memorandum of law in support of motion to dismiss.
October 12, 1973	Plaintiffs supplemental memorandum of law in opposition to motion to dismiss.
October 12, 1973	Defendants supplemental memorandum of law in support of motion to dismiss.
October 12, 1973	Reply affidavit of Lawrence A. Kobrin in support of motion to dismiss.

Docket Entries.

Date Filed	Proceedings
October 12, 1973	Plaintiffs rebuttal memorandum of law in opposition to motion to dismiss.
October 24, 1973	Notice of Motion and affidavit of Lawrence A. Kobrin in support of motion for an order seeking amendment of opinion #39909 to include language required by 28 U.S.C. § 1292 (b) in order to petition the Court of Appeals for permission to take an interlocutory appeal.
October 24, 1973	Consent order substituting attorney of record for defendants.
November 2, 1973	Affidavit of Martin I. Kaminsky in opposition to defendants' motion for certification pursuant to 28 U.S.C. § 1292 (b).
November 2, 1973	Plaintiffs' memorandum of law in opposition to motion for certification pursuant to 28 U. S. C. § 1292 (b).
November 12, 1973	Memorandum endorsed by Stewart, J. granting defendants' application for an order amending opinion #39909 so that language required for certification pursuant to 28 U.S.C. § 1292 (b) is included.
December 10, 1973	Undertaking for costs in the sum of $250.00.
December 14, 1973	True copy of order of United States Court of Appeals granting defendants leave to appeal pursuant to 28 U.S.C. § 1292 (b); Rule 5 of the Federal Rules of Appellate Procedure.

Summons.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

To the above named Defendants:

You are hereby summoned and required to serve upon Pollack & Singer, plaintiff's attorneys, whose address is 61 Broadway, New York, N. Y. 10006, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON,
Clerk of Court.

E. A. BECKER,
Deputy Clerk.

[Seal of Court]

Date: May 24, 1972, New York, N. Y.

Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The Complaint

Plaintiffs allege (on information and belief except as to paragraphs 1, 2, 4 through 13, 16, 17, 19, 24 and 29):

The Parties

1. Plaintiff, 1050 Tenants Corp. (hereinafter "the Corporation") is a New York corporation organized pursuant to Section 402 of the Business Corporation Law, with an authorized capital of 45,000 shares of $1.00 par value, of which 42,400 shares are allocated to apartments in an apartment house building located at 1050 Park Avenue, in the City, County and State of New York and owned by the Corporation, which is also the address of the principal and only office of the Corporation.

2. Plaintiffs Herbert Saltzman and Joan Saltzman ("the Saltzmans") are and have been the purchasers, and at all times pertinent hereto, the owners and holders of 710 shares of the Corporation; they sue both individually and, pursuant to Rule 23, Fed. R. Civ. P., as or on behalf of a class (defined hereinbelow and sometimes referred to as "the Class" or as "the Purchasers") of which they are and were members.

3. Defendants Peter Jakobson, John R. Jakobson, Arthur D. Emil, and Lawrence A. Kobrin (hereinafter sometimes "the Sponsors") were the sponsors and promoters of the

cooperative plan pursuant to which the Corporation was organized and the Purchasers purchased their shares of the stock of the Corporation from the Sponsors and/or the Corporation. Until after the sales to the Purchasers of shares of stock of the Corporation (more fully described hereinbelow), the Sponsors dominated and controlled the Corporation and directed, indirectly or directly, the management, actions and all policies and decisions of the Corporation and were, for all intents and purposes, the equivalent of or otherwise de facto were the Corporation or its Board of Directors or its alter ego, and otherwise controlled the Corporation within the meaning of Section 15 of the Securities Act of 1933 and Section 20(a) of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

Jurisdiction

4. Jurisdiction of this Court over this action is based upon 28 U.S.C. Section 1331(a) and upon Section 22(a) of the Securities Act of 1933 (15 U.S.C. Section 77v (a)), Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78aa) and upon the principle of pendent jurisdiction; the amount in controversy exceeds $10,000, exclusive of interest and costs.

5. This action arises under Sections 15 and 17(a) of the Securities Act of 1933, Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and the Rules and Regulations of the Securities and Exchange Commission promulgated thereunder, including Rule 10b-5; this action also arises under Section 352 of the General Business Law of the State of New York and under common law.

6. The claims of the Purchasers and of the Corporation are in respect of or arise out of the same series of transac-

tions or occurrences, and questions of law and fact common to all plaintiffs will arise in this action.

Class Action Allegations

7. This action is brought by the Corporation as an individual action and by the Purchasers as an individual and a class action pursuant to Rule 23(b)(1)(b) and Rule 23(b) Fed. R. Civ. P.

8. The Class in behalf of which the Saltzmans bring this action consists of all persons similarly situated who purchased shares of the Corporation as a result of the wrongs alleged hereinbelow in or after May, 1968 until approximately June 30, 1969.

9. The members of the Class are so numerous that it is impractical to bring them all before the Court; the Class consists of the owners and former owners of the shares of the Corporation and the numerous apartments in the building now owned by the Corporation at 1050 Park Avenue, New York, New York (as defined in paragraph 8 supra), totalling at least 50 persons or families.

10. Common questions of law and fact exist as to all members of the Class, including inter alia:

a) whether the defendants made the misrepresentations set forth hereinbelow in paragraph 22;

b) whether the defendants omitted to state the facts set forth hereinbelow in paragraph 23;

c) what defendants actually knew or should have known at the time of their dealings with the Class;

d) to what extent the shares of stock of the Corporation sold to the members of the Class were worth less than they would have been had the representa-

tives and statements made by defendants to the members of the Class been true and complete;

e) whether the wrongs alleged are actionable under the statutes cited and at common law.

11. The claims of the Saltzmans are typical of the claims of the Class; the Saltzmans are shareholders of the Corporation and resident owners of 1050 Park Avenue, who purchased from or through defendants as a result of the wrongs herein alleged.

12. The Saltzmans will fairly and adequately represent the interests of the Class; their interests are not antagonistic to the Class and they intend to prosecute this action vigorously and in a creditable manner. The Saltzmans have retained to represent them counsel who are competent and experienced in this type of litigation and in litigation before this Court.

13. Conducting this action as a Class action is superior to all other available methods of fair and efficient adjudication of this controversy since:

a) the members of the Class are too numerous to permit the institution and prosecution of separate actions; the cost and expense of such individual actions by individual purchasers alone when weighed against the recovery obtainable, would be prohibitive to the point of constituting an actual bar to the bringing of such action;

b) to the best of the plaintiffs' knowledge, this action is the only action against defendants for the wrongs herein complained of;

c) The wrongs complained of herein involve complex questions of both law and fact, which questions

are common between the Saltzman and the Class; conducting this action as a Class action thus will result in substantial convenience to defendants and will be in the interests of the efficiency of judicial administration and of uniformity and justice, by saving judicial time and avoiding a multiplicity of results, trials and decisions.

d) to prosecute and try the Saltzmans' claims (asserted in their own behalf and on behalf of the Class) as a class action will present no greater difficulties than other cases of this nature which have herctofore been declared by this Court maintainable as class actions.

FACTS COMMON TO ALL CLAIMS

14. During about 1968 and January of 1969, the Sponsors conceived of, drafted, administered and brought into being and operation a plan and transaction between and involving themselves, the Corporation and the Purchasers, the essential terms and ingredients of which were the following:

a) the Sponsors would form, control and administer the Corporation;

b) the Corporation (at the discretion and through the acts of the Sponsors) would issue and sell its shares to the public;

c) the Purchasers (as a result of negotiations and agreements reached with the Sponsors for themselves and for the Corporation) would purchase the shares of the Corporation, paying therefor cash, which cash would be delivered into escrow to or for the Sponsors; and

d) the Sponsors would deliver to the Corporation some of the said cash received from the issuance and sales of the Corporation's shares of stock, together with title and ownership to the building and fee at 1050 Park Avenue, New York City, keeping the balance of the cash for themselves.

15. The Sponsors in the said plan and transaction acted in the capacity (among other capacities) of dealer, selling agent and underwriter in and in connection with the issuance and sales of the shares of stock of the Corporation; and as a result thereof (and of their other actions and capacities in the plan and transaction) the Sponsors owed fiduciary and other duties of care, loyalty, honesty and fairness to the Corporation and the Purchasers.

16. Pursuant to and in connection with the said plan and transaction, from on or about May, 1968 to on or about January 31, 1969, from or within New York City, New York, the Sponsors, directly or indirectly sold, induced and caused the issuance and sale or supplied for sale on the open market to the Purchasers and solicited and induced the sale of and purchases by the public and by the Purchasers of the shares of stock of the Corporation, and participated in, controlled, aided and abetted or otherwise were directly involved in and part of and the direct financial beneficiaries of the issuance by the Corporation and the sales to the public and the Purchasers of the shares of the stock of the Corporation, including (but not limited to) sales to the Saltzmans of 710 shares of the stock of the Corporation.

17. The said stock was issued, sold and supplied for sale by or through the Sponsors and the wrongs complained of herein were perpetrated and consummated by the use of means and instruments of transportation and communica-

tions in interstate commerce and of the mails, including but not limited to the use of interstate telephone for the negotiation of many of the details of the Corporation's issuance of its shares and of the sales to some of the Purchasers and the use of the mails for sending of written documents of offer or sale to or by defendants from or to the Corporation and some of the Purchasers.

18. In connection with the said issuance of the Corporation's shares and the said stock sales to the Purchasers, the Sponsors jointly and in concert, omitted to state numerous material facts and made numerous misstatements of material facts, all as more fully described hereinbelow, and as a result thereof the Corporation and the Purchasers have been harmed and sustained damages in that the Corporation was caused to remit to the Sponsors more than an adequate portion of the consideration from the sales of the shares and/or in that the consideration received by the Sponsors for and from the shares of the Corporation sold to the Purchasers was excessive and unfairly high, all to the personal and wrongful gain and benefit of the Sponsors.

19. At all times pertinent to the Complaint, the Sponsors and each of them had notice of, knew, had means of knowing and could and should have known all material facts and circumstances regarding the matters which they stated or omitted to state to the Corporation and to the Purchasers as described and complained of hereinbelow.

FIRST COUNT
ON BEHALF OF ALL PLAINTIFFS

(Section 10(b) of the Securities Exchange Act of 1934)

20. Plaintiffs repeat and reallege paragraphs 1 through 19 of this Complaint.

21. The issuance of the Corporation's shares and the sales of the shares of the Corporation to the Purchasers were sales or purchases of securities in contravention of Section 10(b) of the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, including Rule 10(b)-5, in that in connection therewith, and by use of means or instruments of transportation and communication in interstate commerce or by use of the mails, the Sponsors directly or indirectly (a) employed a device, scheme or artifice to defraud the Corporation and/or the Purchasers; (b) obtained money or property from the Corporation and/or Purchasers by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices and a course of business which operated as a fraud and deceit on the Corporation and/or the Purchasers.

22. In connection with and in the course of the said issuance of shares by the Corporation and the stock sales to the Purchasers, the Sponsors stated to plaintiffs and represented to them the following untruths, among others:

a) that, based upon the type of plumbing in use in the building at 1050 Park Avenue (which was to be the principal asset of the Corporation), the age of the building, defendants' experience over the past two years and other factors, the plumbing system of the building was properly and fully in order and serviceable, except that portions of the plumbing pipes would probably have to be replaced at an annual expenditure of no more than $5,000-$6,000 over a period of approximately ten to fifteen years until completion of replacement of all such pipes;

b) that the cost to replace all pipes, including domestic hot and cold water risers and defective branch lines, would total no more than $145,000.00;

c) that the cost of all electrical repairs and replacements necessary at the building would be $15,720.00;

d) that the sum of $200,165.00 which the Sponsors had agreed to pay over to the Corporation (pursuant to the Cooperative Plan) would constitute a "repair fund" which would be more than sufficient to cover the repairs and renovations required at the building;

e) that the annual labor costs including wages for the nineteen building employees utilized in the then current method of staffing and allocation of building employees would total $113,000.00 for the first year;

f) that the then present building superintendent, who was competent, experienced in and important to the efficient and orderly operation and maintenance of the building did not intend to resign and leave the service of the building and the Corporation, and that defendants would not displace him or provoke his leaving but rather would reserve for him and not sell the stock pertaining to the apartment (#2B-1) then occupied by the superintendent;

g) that the total cost of electricity and gas during the first year for the building would be $3,600.00;

h) that aside from repairs referred to above, the building was in first-class condition and that the total cost of repairs, painting, supplies and miscellaneous such expenses for the building during the first year would be $14,000.00;

i) that Pease and Elliman was the selling agent;

j) that there was a possibility that payments for interest past due at the time of the closing might be tax deductible.

23. In connection with and in the course of the said issuance of shares by the Corporation and the said sales of the shares of the Corporation to the Purchasers, the Sponsors omitted to state the following material facts, among others:

a) that their representations regarding the plumbing system at the building (such as those set forth in par. 22(a) and (b) supra) were based among other things upon the cost if the work were done by non-union labor and that use of such labor was highly undesirable and ill-advised according to the managing agent and other persons knowledgeable in this field;

b) that in making their representations regarding the wiring and electrical system at the building (such as that in par. 22(c) supra), the Sponsors were relying on repairing the electrical system with cable which would be inadequate to service the known and usual needs (such as air conditioning) of the tenants of the building and was otherwise undesirable and not recommended for an apartment building of the type involved;

c) that the repair fund (referred to in paragraphs 14 and 22(d) supra) was grossly inadequate for the purposes it was represented and understood to cover;

d) that the fire prevention and protection system at the building (including fire hoses) was defective, deteriorated and hazardous and would have to be replaced (at considerable expense) for the safety of the building and the tenants;

e) that the terms of the Union contract (in effect at the time of such sales) provided for wage increases for the year starting April 21, 1968 of $5 per week and like increases for the year starting April 21, 1969, so that the labor costs for the first year for the nineteen employees of the building would total at least $124,000 (including vacations, holidays and birthday pay, which were required pursuant to the said contract) and that in order to operate even at a level $3,000 higher than the represented and projected cost the building staff would necessarily have to be reduced by about two employees with resultant diminution of service and other inefficiencies in the operation and maintenance of the building;

f) that the estimated real estate tax expense did not take into consideration the virtually certain increase in the assessed valuation of the building and concomitant tax increase by a substantial amount, which would take place by reason of the sale of the building to the Corporation;

g) that defendants were granting discounts of up to 40% from the scheduled apartment prices to certain of the purchasers of the shares of the Corporation but not to all of them;

h) that the then present building superintendent, who was competent, experienced in and important to the efficient and orderly operation and maintenance of the building, was about to resign and leave the service of the Corporation and the building and that defendants intended and were about to sell the shares of stock pertaining to the apartment (#2B-1) then occupied by the superintendent with the resultant effect that he would necessarily therefore resign and

leave the service of the Corporation and the building; and that he could be replaced only by paying a substantially increased salary to a less qualified superintendent willing to accept less desirable living accommodations and with the further effect that the Corporation would own a substantially less valuable apartment;

(i) that the Sponsors themselves had spent in repairing the building during 1967 approximately $25,000 or twice the amount they said it would cost as a maximum for repairs for the first year after the transaction closed, and that the costs or true estimated costs for maintenance of the building and the necessary repairs thereat were substantially in excess of the amounts set forth hereinabove in subparagraphs (a) through (h) of paragraph 22 hereof;

j) that a 1968 New York City ordinance required the installation of electrical interlock devices on the four elevators in the building at an estimated cost of $12,000.00.

24. The Purchasers (including the Saltzmans) and the Corporation did not know that the statements and representations of defendants were materially untrue or incomplete as aforesaid, but rather believed that defendants had truthfully and completely stated all material facts known to them or within their possible knowledge and relied upon such belief and upon their belief that the statements made to them by defendants were true and complete; as a result of such reliance, the Purchasers (including the Saltzmans) and the Corporation were thereby induced to and did enter into and consummate the said plan and transaction (including but not limited to the said issuance of the Corporation's shares and the

said purchases of the shares of the stock of the Corporation), all to their damage as set forth hereinabove.

25. The said untruths and omissions were material and were made by defendants with actual knowledge of their falseness and incompleteness and were otherwise recklessly, intentionally, knowingly and fraudulently made by defendants.

SECOND COUNT
ON BEHALF OF THE PURCHASERS INDIVIDUALLY AND AS A CLASS

(Section 17(a) of the Securities Act of 1933)

26. Plaintiffs repeat and reallege paragraphs 1 through 19 and 22 through 25 of this Complaint.

27. By reason of the foregoing, the Purchasers were offered or were caused to purchase shares of the stock of the Corporation by means of offers or sales of securities, in connection with which defendants, in violation of Section 17(a) of the Securities Act of 1933, by use of means or instruments of transportation and communication in interstate commerce or by use of the mails, (a) employed a device, scheme or artifice to defraud the Purchasers; (b) obtained money or property from the Purchasers by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices and a course of business which operated as a fraud and deceit on the Purchases.

THIRD COUNT
ON BEHALF OF THE PURCHASERS
INDIVIDUALLY AND AS A CLASS

(Section 12 (2)
of the
Securities Act of 1933)

28. Plaintiffs repeat and reallege paragraphs 1 through 19 and 22 through 25 of this Complaint.

29. The Purchasers did not know that the said statements and representations of defendants were materially false or incomplete as aforesaid.

30. Defendants knew, or in the exercise of reasonable care, could and should have known that their statements and representations to the Purchasers were materially untrue or incomplete as aforesaid and defendants acted with a reckless disregard for the interests of the Purchasers and the public at large.

31. By reason of the foregoing, the said sales of the shares of the Corporation to the Purchasers constituted or involved offers or sales of securities in contravention of Section 12(2) of the Securities Act of 1933, by the use of means or instruments of transportation and communication in interstate commerce or of the mails, by means of prospectuses and oral communications, which included untrue statements of material facts or omissions to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, the Purchasers not knowing of such untruths or omissions.

FOURTH COUNT
ON BEHALF OF ALL PLAINTIFFS

(Section 352-c of the General Business Law of New York)

32. Plaintiffs repeat and reallege paragraphs 1 through 19, 22 through 25, 29 and 30 of this Complaint.

33. By reason of the foregoing, defendants, in contravention of Section 352-c of the General Business Law of the State of New York, used the following acts or practices to induce or promote with the Corporation and the Purchasers the issuance, distribution, exchange, sale, negotiation and purchase of the stock of the Corporation:

a) fraud, deception, concealment, suppression and false pretense;

b) promises and misrepresentations as to the future which were beyond reasonable expectations and unwarranted by existing circumstances;

c) representations of statements which were false, where defendants (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representations or statements made.

FIFTH COUNT
ON BEHALF OF ALL PLAINTIFFS

(Common Law Wrongs)

34. Plaintiffs repeat and reallege paragraphs 1 through 19, 22 through 25, 29 and 30 of this Complaint.

35. The said untruths and omissions were material and were made by defendants with knowledge of their falsity and incompleteness and were otherwise maliciously, recklessly, knowingly and fraudulently made by defendants with intent to induce the Purchasers (including the Saltzmans and the Corporation) to believe defendants and to rely on the statements of defendants as true and complete in all material respects and, in such reliance, to issue the shares or to purchase the shares of the Corporation to their detriment and damage as aforesaid, as in fact the Corporation and Purchasers (including the Saltzmans) did.

Wherefore, plaintiffs respectively demand judgment against defendants in favor of each and all of them and in favor of all members of the Class and as follows:

a) in favor of the Corporation for $1,000,000.00 plus interest;

b) in favor of each of the Purchasers and each member of the Class for their pro rata damages in the total sum of $1,000,000.00 plus interest;

c) for their reasonable counsel fees in connection herewith;

d) for the costs and disbursements of this action; and

e) granting them such other and further relief as the Court may deem owing and proper.

POLLACK & SINGER

By: MARTIN I. KAMINSKY
(a member of the firm)
Attorneys for Plaintiffs

Answer.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendants, by their attorneys, Rosenman Colin Kaye Petschek Freund & Emil, for their answer to the complaint herein, allege as follows:

1. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 1 of the complaint.

2. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 2 of the complaint except admit that plaintiffs Herbert Saltzman and Joan Saltzman purchased 710 shares of the Corporation and admit that they purport to bring this action on behalf of a class.

3. Deny each and every allegation contained in paragraph 3 of the complaint except admit that defendants were the sponsors of the cooperative plan pursuant to which the Corporation was organized and certain individuals purchased their shares of stock of the Corporation.

4. Deny each and every allegation contained in paragraphs 4, 5, 6 and 7 of the complaint except admit that the complaint purports to be brought under the statutes and rules cited therein.

5. Deny each and every allegation contained in paragraphs 8, 9, 10 and 11 of the complaint.

Answer.

6. Deny each and every allegation contained in paragraph 12 of the complaint except deny knowledge or information sufficient to form a belief with respect to the intent of the Saltzmans and the allegations concerning plaintiffs' counsel.

7. Deny each and every allegation contained in paragraph 13 of the complaint.

8. Deny each and every allegation contained in paragraph 14 of the complaint except admit that defendants sponsored a Plan of Cooperative Organization and refer to said Plan for the terms and conditions thereof.

9. Deny each and every allegation contained in paragraph 15 of the complaint.

10. Deny each and every allegation contained in paragraph 16 of the complaint except admit that defendants benefited financially from the sales of stock of the Corporation to the public.

11. Deny each and every allegation contained in paragraphs 17, 18 and 19 of the complaint.

12. Deny each and every allegation contained in paragraph 20 of the complaint except as otherwise admitted or denied.

13. Deny each and every allegation contained in paragraphs 21, 22, 23, 24 and 25 of the complaint.

14. Deny each and every allegation contained in paragraph 26 of the complaint except as otherwise admitted or denied.

Answer.

15. Deny each and every allegation contained in paragraph 27 of the complaint.

16. Deny each and every allegation contained in paragraph 28 of the complaint except as otherwise admitted or denied.

17. Deny each and every allegation contained in paragraphs 29, 30 and 31 of the complaint.

18. Deny each and every allegation contained in paragraph 32 of the complaint except as otherwise admitted or denied.

19. Deny each and every allegation contained in paragraph 33 of the complaint.

20. Deny each and every allegation contained in paragraph 34 of the complaint except as otherwise admitted or denied.

21. Deny each and every allegation contained in paragraph 35 of the complaint.

AS AND FOR A FIRST DEFENSE

22. The court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SECOND DEFENSE

23. The complaint, and each and every cause of action contained therein, fails to state a claim upon which relief can be granted.

AS AND FOR A THIRD DEFENSE

24. Plaintiffs Herbert Saltzman and Joan Saltzman do not have standing to maintain this action in a representative capacity on behalf of the purported class described in the complaint.

AS AND FOR A FOURTH DEFENSE

25. The facts alleged in the complaint and claimed to constitute fraud, untrue statements and material omissions, were discovered, or with the exercise of reasonable diligence should have been discovered, by plaintiffs and the class they purport to represent, more than one year preceding January 31, 1972.

AS AND FOR A FIFTH DEFENSE

26. Defendants did not know, and in the exercise of reasonable care could not have known, that untrue statements and material omissions were made as alleged in the complaint.

WHEREFORE, defendants demand judgment dismissing the complaint, together with the costs and disbursements of this action.

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By (Illegible)
A Member of the Firm

Notice of Motion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Arthur D. Emil, sworn to September 7, 1972, the undersigned will move this Court at a Motion Part thereof, to be held in Room 110, United States Court House, Foley Square, New York, New York, on September 19, 1972, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the complaint on the grounds that the Court lacks jurisdiction over the subject matter of the action and the Complaint fails to state a claim upon which relief can be granted; and for such other and further relief as to the Court shall seem just and proper.

Dated: New York, New York, September 8, 1972.

Yours, etc.,

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

By ASA D. SOKOLOW
A member of the firm
Attorneys for Defendants

To: POLLACK & SINGER, Esqs.
Attorneys for Plaintiffs

Affidavit of Arthur D. Emil, in Support of Motion to Dismiss.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ARTHUR D. EMIL, being duly sworn, deposes and says:

I am a member of the bar of this Court and a defendant herein. I am fully familiar with the facts of this case and make this affidavit in support of defendants' motion to dismiss for lack of subject matter jurisdiction.

THE PLEADINGS

The instant Complaint (a copy of which is annexed hereto as Exhibit A), attempts to state claims against the defendants under the Federal securities laws. Its allegations speak almost exclusively in terms of sales of corporate shares to stockholders in an attempt to avoid the plain fact that what is actually involved in this case is the purchase and sale of cooperative apartments.

Thus the Complaint begins by identifying plaintiff 1050 Tenants Corporation ("the Corporation") as a New York corporation, the outstanding shares of which "are allocated to apartments in an apartment house building" located at 1050 Park Avenue, New York, N.Y. (¶ 1). The Saltzman plaintiffs are identified as the purchasers and owners of 710 of the Corporation's shares, who sue both individually and on behalf of a class comprised of owners and former owners of the corporate shares and apartments in the building (¶¶ 2, 9). The defendants were

the sponsors and promotors of the cooperative plan pursuant to which the Corporation was organized and the shares therein sold (¶ 3).

It is asserted (¶ 5) that this action arises, in part, under the antifraud provisions of the federal securities laws which are alleged (¶ 4) to confer jurisdiction upon this Court. It is further claimed that the principles of pendent jurisdiction confer jurisdiction over the state statutory and common law claims also asserted.

After setting forth the usual class action allegations (¶¶ 7-13), the Complaint alleges (¶ 14) that, in 1968 and January 1969, defendants formulated and executed a plan and transaction, the essential terms and ingredients of which involved the formation of the Corporation, sale of the Corporation's shares and transfer of title to the building and fee at 1050 Park Avenue from the defendants to the Corporation in return for some of the moneys raised by sale of the stock.

Five counts are asserted against the defendants. The first (¶¶ 20-25) is based on Section 10(b) of the Securities Exchange Act of 1934; the second (¶¶ 26 & 27) on Section 17(a) of the Securities Act of 1933; the third (¶¶ 28-31) on Section 12(2) of the Securities Act of 1933; the fourth (¶¶ 32 & 33) on Sections 352-c of the General Business Law of New York; and the fifth (¶¶ 34 & 35) on common law.

Each of the counts is essentially predicated upon the same alleged wrongs of the defendants: *viz.* the making of untrue and fraudulent statements of fact (¶ 22) and omissions to state material facts (¶ 23) generally concerning estimates of repair and operating costs of the apartment house sold by defendants.

Defendants' Answer (a copy of which is annexed hereto as Exhibit B) denies the substantive allegations of the Complaint and raises several affirmative defenses, including the lack of subject-matter jurisdiction.

Affidavit of Arthur D. Emil.

The lengthy allegations of the Complaint make only the most fleeting reference to the fact that an apartment house is involved in the present transaction. Nowhere is it indicated that the individual plaintiffs and the purported class all live or lived in that apartment house. These facts, the Complaint would have us believe, are merely incidental to the claims now asserted. But in casting the present transaction in terms of a sale of securities, in converting the plaintiff tenant-owners into the exclusive role of stockholders, the Complaint exalts form over substance and ignores the plain fact that what is involved in the present action is real estate.

Outline of the Transaction

In 1967 the defendants herein, who were the fee owners of 1050 Park Avenue, determined to sell the land and building to its tenants and others by means of a plan of cooperative organization. By that time, the conversion of older apartment buildings, such as 1050 Park, from private to cooperative ownership had become very popular. The popularity of this form of ownership was attributable, in large measure, to the purchaser's ability to acquire a permanent residence (and make substantial and lasting alterations thereto) and to take advantage of the substantial tax benefits which accrued to cooperative apartment owners in the form of deductions similar to those taken by owners of private houses. Other advantages included the right of the cooperative tenant-owners to have a voice in controlling the operation of their homes, similar to the right exercised by other private home owners.

The offers for sale of cooperative apartments in New York, as interests in real estate, are subject to the provisions of the New York State Real Estate Syndication Act (General Business Law, Sections 352 et seq.). Accord-

ingly, such offers ean only be made by a formal offering statement, or "Plan", which has been accepted for filing by the Department of Law of the State. Plans are not accepted for such filing and eannot be distributed unless and until they comply with the stringent and extensive disclosure requirements under the regulations promulgated by the Attorney General pursuant to the Act.

Defendants' first effort pursuant to such a filed Plan, begun in September 1967, to effeetuate a cooperative, did not meet with success. Because a legally insufficient number of tenants who occupied rent-controlled apartments opted for cooperative ownership, the plan never became effective and was withdrawn.

Defendants, as is frequently the case in sueh circumstances, thereupon deeided to offer the plan "outside" of the rent control laws which, in effect, meant under the applieable laws that rent eontrolled tenants not purchasing apartments could not be evicted.

The Plan pursuant to which 1050 Park Avenue was converted to eooperative ownership (a eopy of whieh is annexed hereto as Exhibit C) was filed and offered to the publie in May 1968. Tenants in occupaney, both rent-controlled and deeontrolled, were offered the first opportunity to purehase their apartments. Vacant apartments and those apartments oecupied by deeontrolled tenants who ehose not to purehase were then offered for sale. A sales office was established in the building and was responsible for the selling effort. Copies of the Plan were distributed there and apartments were shown to prospeetive purehasers. Upon information and belief, all of the purchasers were residents of New York.

By January 1969, all of the apartments had been sold. At the elosing, on January 30, 1969, title to the property was conveyed to the Corporation, the defendants reeeived payment therefor from the proceeds of the apartment sales, and each tenant-owner reeeived a proprietary lease

for his apartment. Subsequent to the closing, the tenant-owners met and elected a Board of Directors to manage the affairs of the Cooperative.

This brief outline of the transaction here involved has purposefully avoided reference to "stock" or "stockholders" for these concepts were purely incidental in both purpose and effect. The corporate form employed and the issuance of shares was merely the mechanical vehicle which enabled purchasers to acquire ownership of personal residences on a permanent basis and qualify lawfully for the tax benefits noted above. Homes, not investments in income producing property, was the object. Real estate, not securities, was the essence of the transaction.

The Plan of Cooperative Organization

The most cursory review of the Plan of Cooperative Organization (Exhibit C hereto), pursuant to which the apartments (and shares) were sold, establishes beyond question that home ownership, not profits on an investment, was the object of the purchasers.

The Plan begins with an exhaustive and detailed description of the building, apartments and surrounding area (pp. 2-7). Included therein are references to necessary repairs to be made on the basis of inspections and reports (Schedules A and AA to the Plan) made by two separate consulting engineers, one retained by the defendants and the other by a group of tenants in the building. Provision is also made for a repair fund, to be paid at the closing by the Sponsors to the Corporation, to cover the estimated cost of repairs.

The Plan next deals with the rights of tenants in possession (pp. 7-9) and price changes which may be made "to meet possible varying demands for sizes and types of apartments" (p. 9).

Affidavit of Arthur D. Emil.

Under the heading "Cooperative Corporate Organization", it is explained (pp. 10-11) that the Corporation has been organized with an authorized capital stock of 45,000 shares, 42,400 of which "will be allotted to the apartments sold under this Plan." It is then stated

> "Both the certificate of incorporation and the by-laws of the Apartment Corporation provide, among other things, that *the primary purpose of the Apartment Corporation is to provide residences for shareholders* who shall be entitled, solely by reason of their ownership of shares, to proprietary leases for the apartments." [Emphasis added.]

This explicit recognition of this "primary purpose" of the Corporation is reaffirmed in other features set forth in the Plan. Thus, each shareholder is required to execute a proprietary lease for "the Apartment purchased" by him (p. 11). The rights and obligations under the lease are detailed at length (pp. 12-14), including restrictions on the transfer or subletting of the apartments. Indeed, these leases contain restrictions on any non-residential use of the apartments sold.

The purchase price paid by each tenant-owner is not an investment made with the hope of a return on that investment any more than it is when a tenant buys a house. Rather the price was paid "in order to provide funds to enable the Apartment Corporation to acquire title to the Property" (p. 14) and thus residences for the purchasers.

The number of shares acquired by the tenant-owners and the price paid therefor are not the result of any "investment decision" on their part. They serve merely to reflect the differing values of apartments and provide a means for the equitable sharing of expenses and, more importantly, to qualify for the tax benefits which form one of the major inducements for cooperative ownership. Thus

the Plan explains (p. 17) that under the applicable provisions of the tax laws

> "the price paid for each block of shares under the Plan must bear a reasonable relationship to the portion of value of the equity of the Apartment Corporation in the Property attributable to the Apartment to which that block of shares is allocated."

Conclusion

The authorities discussed in defendants' accompanying memorandum of law make clear the distinction between securities and real estate. Both the profit motive and reliance on others for investment management, essential requirements for a "security", are totally absent from the present case. Home ownership, not profit, was the design, purpose and effect of the cooperative venture here involved. And it was the purchasers, through their own Board of Directors—not the defendants—who controlled the operations of the cooperative once the "investment" was made, title to the property had passed and the tenants organization began its operations.

For these reasons it is respectfully submitted that defendants' motion should be granted and the action dismissed.

(Sworn to by Arthur D. Emil, September 7, 1972.)

Exhibit A (Complaint), printed supra, p. 5a.

Exhibit B (Answer), printed supra, p. 21a.

Exhibit C, Amended Plan of
Cooperative Organization.

THIS PLAN HAS BEEN FURTHER AMENDED.
S[illegible]ERT ON INSIDE COVER. THE DATE
[illegible]T IS

DEC 10 1968

THIS AMENDED PLAN IS PROMULGATED OUTSIDE OF THE CITY RENT AND REHABILITATION LAW AND REGULATIONS. THE RIGHTS OF TENANTS IN OCCUPANCY OF RENT CONTROLLED APARTMENTS ARE EXPLAINED ON PAGES 8-10.

~~Deft. Exh.~~
Plft. Exh. (2) For I.D.
Charles Shapiro
Doyle Reporting Inc.
9/4/73

1050 PARK AVENUE
New York, New York

AMENDED PLAN OF COOPERATIVE ORGANIZATION

Apartment Corporation:

1050 Tenants Corp.
c/o Karelsen Karelsen
Lawrence & Nathan, Esqs.,
230 Park Avenue
New York, New York 10017
MU 6-6543

Sponsor:

Peter Jakobson, John R.
Jakobson, Arthur D. Emil,
and Lawrence A. Kobrin
10th Floor
32 East 57th Street
New York, New York 10022
MU 8-6040

Cash price of shares	$3,521,320
Property subject to mortgages	2,045,779
Total	$5,567,099

The approximate date of the proposed first offer to the public is May 14, 1968. This Amended Plan cannot be used after seven months from said date.

SEE AMENDMENT ON INSIDE COVER.

The prices of apartments or the number of shares allocated to apartments may be changed by the Sponsor from time to time during this offering and prior or subsequent purchasers may pay less or more for apartments than purchasers of other similar apartments. The effect of such change is set forth on pages 9-10.

Selling and Managing Agent:

Pease & Elliman, Inc.
60 East 56th Street
New York, New York 10022
TE 8-6600

THE FILING OF THIS PLAN WITH THE DEPARTMENT OF LAW OF THE STATE OF NEW YORK DOES NOT CONSTITUTE APPROVAL OF THE ISSUE OR THE SALE THEREOF BY THE DEPARTMENT OF LAW OR THE ATTORNEY GENERAL OF THE STATE OF NEW YORK. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Exhibit C, Amended Plan of Cooperative Organization.

SECOND AMENDMENT TO PLAN OF COOPERATIVE ORGANIZATION AND OFFERING STATEMENT FOR 1050 PARK AVENUE, NEW YORK, NEW YORK

The amended Plan for Cooperative Organization and Offering Statement for 1050 Park Avenue, New York, New York, dated May 14, 1968 and amended September 16, 1968, is further amended as follows:

1. The Plan was declared effective by the Sponsor on December 9, 1968 and the Closing under the Plan has been scheduled to take place on or about January 20, 1969. Accordingly, any Purchase Agreements executed after the effective date of this Second Amendment must be accompanied by the required 10% down-payment and the balance will be required to be paid on or before January 10, 1969. Purchase Agreements have already been executed for 49 apartments and the following apartments remain available for sale at the prices shown on Schedule B (revised) of the Further Amendment dated September 16, 1968:

	8B	
4A-1	11B	2C
7B	12B	1D
7B-1	13B	14D

2. The designation for the superintendent's apartment has been changed from Apartment 2B-1 to Penthouse D. The 530 shares previously allocated to Penthouse D shall be allocated to Apartment 2B-1 and there will be no shares allocated to Penthouse D. Accordingly, there will be no other change in the total number of shares allocated or the required maintenance payments. The purchase price for Apartment 2B-1 will be $48,418.15.

3. The tax rate for New York City real property taxes for the fiscal year 1968-69 has been set at $5.244, and, accordingly, the amount allowed on Schedule C for taxes must be increased to $75,225.60. Such increase reduces the reserve for contingencies provided to $1,685.76. On the basis of the estimates furnished by Sponsor to the Selling Agent of the operating expenses for the property for the calendar year 1968, the Selling Agent has given its opinion that the budget set forth in Schedule A would be adequate for the present operation of the property at this time.

4. The Sponsor has agreed that the entire amount reflected in the Plan for the repair and rehabilitation fund in the sum of $211,165 shall be paid to the Apartment Corporation at the closing, without regard to the number of shares actually sold or those retained by nominees or other assignees of the Sponsors. Accordingly, the provisions for the deferred payment of any portion of that sum are deleted from the Plan.

5. No other change is made in the Plan dated May 14, 1968 as amended September 16, 1968 and as further amended by this Second Amendment.

Dated: December 10, 1968

PETER JAKOBSON, JOHN R. JAKOBSON,
ARTHUR D. EMIL and LAWRENCE A. KOBRIN,

Sponsor.

PEASE & ELLIMAN, INC.,

Selling Agent.

Exhibit C, Amended Plan of Cooperative Organization.

FURTHER AMENDMENT TO PLAN OF COOPERATIVE ORGANIZATION AND OFFERING PLAN FOR 1050 PARK AVENUE, NEW YORK, NEW YORK

The amended Plan for Cooperative Organization of 1050 Park Avenue, New York, New York, dated May 14, 1968, is further amended as follows:

1. The prices for all of the apartments listed in Schedule B (revised), which apartments are those for which Purchase Agreements have not been executed on the date hereof, are increased by ten percent to the prices shown on the annexed Schedule B (revised). The Sponsor also reserved the right to change the price for any apartment for which a Purchase Agreement has been executed prior to the effective date of this Amendment but which Purchase Agreement is cancelled hereafter, but such apartments are not listed in Schedule B (revised) annexed hereto.

The Selling Agent has advised the Sponsor in writing that in its opinion the changes in price effected by this Amendment and set forth in Schedule B (revised) does not affect the reasonable relationship of the price paid for each block of shares to the portion of value of the equity of the Apartment Corporation attributable to the apartment to which the shares are allocated.

2. No other change is made in the amended Plan dated May 14, 1968, to which this further amendment, dated as of September 16, 1968, is annexed.

Dated: September 16, 1968

PETER JAKOBSON, JOHN R. JAKOBSON,
ARTHUR D. EMIL and LAWRENCE A. KOBRIN,
Sponsor.

PEASE & ELLIMAN, INC.,
Selling Agent.

SCHEDULE B (REVISED)

Apartment	Revised Price
4-A1	$20,098.10
6-A	81,305.95
7-A	63,034.95
10-A	84,960.15
3-B	77,194.98
7-B	82,219.50
7-B1	21,925.20
8-B	83,133.05
10-B	84,960.15
11-B	85,873.70
12-B	86,787.25
13-B	87,700.80
14-B	88,614.35
2-C	64,852.15
4-C	65,775.60
5-C	66,689.15
8-C	72,170.45
13-C	76,738.20
14-C	77,651.75
1-D	31,974.25
9-D	50,245.25
13-D	53,899.45
14-D	54,813.00
PHD	48,418.15

Exhibit C, Amended Plan of Cooperative Organization.

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1050 PARK AVENUE

AMENDED PLAN OF COOPERATIVE ORGANIZATION

INTRODUCTION

The fee owners of 1050 Park Avenue, New York, New York, Peter Jakobson, John R. Jakobson, Arthur D. Emil and Lawrence A. Kobrin (called collectively the "Sponsor"), present herewith, through Pease & Elliman, Inc. (the "Selling Agent"), an amended plan of cooperative organization (called herein the "Amended Plan" or "this Plan") for the land and building located at 1050 Park Avenue, New York, New York (the "Property"), by purchase thereof by 1050 TENANTS CORP. (the "Apartment Corporation").

This Amended Plan is submitted outside of the provisions of the Regulations of the City Rent and Rehabilitation Administration. Certain of the apartments in the Property are considered rent controlled apartments and the rights of the tenants in occupancy of those apartments are more fully described on pages 8-9 herein.

Under the Plan, the Apartment Corporation will acquire fee title to the Property, and individuals who purchase shares of stock in the Apartment Corporation which are allotted to the apartments under the Plan will become shareholders of the Apartment Corporation and proprietary lessees of their apartments. The shareholders will elect a board of directors which will control the management and affairs of the Property and the Apartment Corporation after the Closing Date (see page 24).

The annual payments required from tenant-shareholders will be established by the board of directors on the basis of the costs of operation of the Property, and such other expenditures as the members of the board of directors may determine. Individual owners will be permitted to install their own permanent improvements and decorations in their apartments, but certain structural improvements or those affecting the utility systems in the building will require approval by the board of directors. The sale, assignment or subletting of apartments which are occupied by tenant-shareholders under this Plan (except for those apartments held by individual nominees of the Sponsor, or assignees of the Sponsor who do not occupy the Apartment for their own personal use) will require the approval of the board of directors or the shareholders (see page 12).

Exhibit C, Amended Plan of Cooperative Organization.

ORIGINAL PLAN

The Property was the subject of an Offering Plan which contemplated cooperative organization and which was offered by the Sponsor on September 14, 1967. Certain of the Apartments in the Property were the subject of Purchase Agreements under the Original Plan and the Sponsor has agreed that any individuals who was such a Purchaser under the Original Plan will be permitted to purchase the same Apartment under this Amended Plan at the same price as provided in the Original Plan, whether or not the price reflected in this Amended Plan has been increased, provided that such person executes a new Purchase Agreement under this Amended Plan within thirty (30) days from the date of this Amended Plan. No Purchaser, however, who does not execute a new Purchase Agreement under this Amended Plan within thirty (30) days from the date of this Amended Plan will be bound by the Purchase Agreement previously executed.

DESCRIPTION OF SURROUNDING AREA

The Property is located at the southwest corner of Park Avenue and East 87th Street in Manhattan, on Park Avenue in a primarily residential area of that thoroughfare. The Property is one block from Madison Avenue, from Lexington Avenue, and from East 86th Street, all of which have extensive retail shopping facilities and establishments. Most of the buildings in the area are residential and many are of cooperative ownership.

Public School No. 6 is located at Madison Avenue and 82nd Street; Public School No. 190 is located at 311 East 82nd Street; and Robert F. Wagner, Jr. High School is located at 222 East 76th Street. There is no representation, however, that residents of the building are now or will be eligible for admission to any of these schools now or at any time in the future. In addition, many independent or private elementary and secondary schools are located within a radius of a ten block area.

The 86th Street Crosstown Bus stops one block from the Property. There is a Lexington Avenue Bus Stop and an IRT Express Subway Station located at Lexington Avenue and 86th Street approximately two blocks from the Property. Other bus lines operate northbound on Madison Avenue and southbound on Lexington Avenue, each one block from the Property.

Exhibit C, Amended Plan of Cooperative Organization.

DESCRIPTION OF BUILDING AND RESIDENTIAL APARTMENTS

The Building is a 14 story and penthouse structure which is located on a plot of approximately 133 ft. on East 87th Street and approximately 100 ft. on Park Avenue. The main entrance of the building is located on Park Avenue. A side entrance, giving access to the lobby and to all apartments, is located at 64 East 87th Street, but that entrance is normally kept locked and can be used only by tenants wishing to exit from within the Building. There is a service entrance giving access to the basement and used for delivery and service facilities. Additional separate entrances on 87th Street serve the professional offices only.

The Building was constructed in 1923, with a fire resistant design including steel skeleton, concrete floors and roof arches.

The Building contains a total of 60 residential apartments. One of the residential apartments (Apartment 1D) is a doctor's office on the ground floor presently occupied for residential purposes. This apartment is included in the offering made by this Plan. One of the residential apartments (Apartment 2B-1) is occupied by the superintendent and is not part of the offering made by this Plan. There are also four additional doctor's offices and a superintendent's office on the ground floor. No shares of stock have been allocated under this Plan to the four doctor's offices, to the superintendent's office or to the superintendent's apartment (Apartment 2B-1). The income, if any, which is available from the renting of the doctor's offices will be received by the Apartment Corporation as commercial or professional income (see Schedule C).

Schedule A to this Plan sets forth a general description of the Building prepared during September, 1967, by Eugene L. Belkin, P.E., consulting engineer, 101 Park Avenue, New York, New York, at the request of the Sponsor.

Since the time of the preparation of the Original Plan, a group of tenants in the building retained The J. G. White Engineering Corp., 80 Broad Street, New York, New York, to make an examination of the Property and render a report on their conclusions. A copy of the report of that firm, dated October 31, 1967, is available for inspection by any interested person at the offices of the Selling Agent. The section of this Report entitled "General Conclusions" is included as Schedule AA to this Amended Plan.

Exhibit C, Amended Plan of Cooperative Organization.

The facade of the Building consists of a granite base, red-face brick, with limestone and terra cotta trim. The side and rear walls consist of face brick. The roof is of rubberoid and red tile with metal flashings, and is surrounded by high parapet walls of brick and terra cotta. A 50,000 gallon capacity round tank, located on a roof platform, supplies the standpipe lines and the house. The plumbing lines within the Building are primarily cast and galvanized iron with some brass replacements which have been made since the construction of the building. The engineer's report indicates that it is expected that within the next several years portions of the existing plumbing pipes will have to be replaced. This conclusion is based upon the present age of the Building and the reported experience over the past several years. These replacements would involve primarily branch lines and smaller risers. Replacements of this type are ordinarily done from time to time as required and not as one major replacement. On the basis of the experience for such repairs over the past several years, the consulting engineer has indicated that an annual expenditure for such repairs of approximately $5,000 to $6,000 per annum would be adequate for the continuing maintenance of the plumbing facilities in the Building.

Steam is supplied by two low pressure coal burning Titusville boilers and two 1,200 gallon horizontal hot water storage tanks, having heating coils fed by steam from the boilers and controlled by aquastats.

The Building has four A. B. See manually-operated electric elevators. Two of these are designated for passenger service and two for freight and other service. The passenger elevators travel to the 14th floor. Access to the penthouse level can be gained by a flight of stairs at the passenger cars. The service cars reach the 15th floor penthouse level. The original construction of the building included an incinerator chute but this is no longer used for garbage disposal. Garbage and refuse is presently collected manually at the service elevator by regular building employees and placed in cans for municipal garbage collection each day.

Wire bins for storage are presently located in the basement in sufficient number to provide one bin for each apartment, but there is no representation that the board of directors of the Apartment Corporation will make such bins available to any purchaser or whether it will impose any charge for the use of such bins at any time in the future.

Exhibit C, Amended Plan of Cooperative Organization.

The original construction of the building provided for four apartments on each floor, each separately serviced by a passenger elevator and a service elevator. As shown by the listing in Schedule B, since the original construction four of these apartments were subdivided into eight smaller units. Under the Plan the subdivided apartment units will be offered first to the tenants in occupancy. In the event that the subdivided apartments are not purchased by the tenants in occupancy, the Sponsor may elect to effect a reconsolidation of the small units into the larger original apartment units or into such other larger or combined units as the Sponsor may determine or may sell them to other purchasers (see pages 7-8 for rights of occupants).

The individual residential apartments in the Building contain standard building fixtures. Floors have generally retained the original hardwood, parquet and pine, with tile in bathrooms and lavatories. In addition, the seven-room and eight-room apartments contain wood-burning fireplaces.

Each apartment in the Building has individual meters for consumption of gas and electricity and tenant-shareholders will pay charges for such consumption directly to the utility companies. The Apartment Corporation will pay for electricity used in the public areas of the building, in any apartments owned by the Apartment Corporation, and in the superintendent's apartment.

A few years ago, there was installed new 1800 ampere service and metering equipment with sufficient capacity for 41 apartments. At that time 25 of the apartments were completely rewired to provide for more adequate electric current. There are shown on Schedule B the identity of those apartments for which the service has already actually been installed. In order to complete the rewiring for all of the apartments in the Building, it would be necessary to install an additional 1000 to 1200 ampere service and feeders for the remaining apartments. At such time, new "cut-out boxes" and air conditioning and appliance outlets must also be installed.

The Sponsor has obtained a commitment, dated August 30, 1967, from Morelite Electrical Service Inc., 279 East Burnside Avenue, New York, New York ("Morelite"), for the work required to complete the electrical installation described in Schedule A. Under the commitment from Morelite, a copy of which is on file in the office of the Selling Agent, the work will commence only after notification from the Sponsor

that this Plan has been consummated, for a cost of $17,065, which amount will be paid by the Apartment Corporation from the funds received by it at the closing (see "Financial Details" at pages 18-20). The Commitment remains in effect through December 31, 1968 and all work completed will be under a two-year guaranty from Morelite and in accordance with certain explanatory material furnished by Morelite by letter dated May 7, 1968, a copy of which is on file and available for examination at the office of the Selling Agent. The Sponsor will give the required notification to the electrical contractor at the time of the closing under the Plan, and the contract with Morelite will be an obligation of the Apartment Corporation. In the event that this Plan is not consummated, the contract will not become effective.

The Morelite commitment with respect to the electrical work does not include work required within individual apartments and such work will be done only at the option and request of individual apartment owners and at their cost and expense. The cost for such work will depend upon the location of the outlets to be installed within the individual apartments. The Morelite commitment includes an estimate that the costs of such installations would probably vary between $75 and $150 for each air conditioning outlet and between $30 and $35 for each kitchen appliance outlet, both including plastering and patch painting (but not wallpapering) of the areas damaged by the work. The proposed electrical work to be done under the commitment will be sufficient for normal air conditioning and kitchen appliances. Since the new wiring will not permit the installation of electric ranges, it is expected that gas cooking ranges will continue to be used in the Building.

Certain of the tenants of apartments in the Building have installed, at their own cost and expense, stoves, refrigerators, or other kitchen equipment, all of which will remain the property of those individual tenants. In addition, on the Closing Date, any apartment not so equipped purchased by a person not now in occupancy, will be equipped by the Sponsor with a stove and refrigerator which will become the property of the purchaser. The stoves and refrigerators will be standard building fixtures and may not be new but will be in good working order on the Closing Date.

At the Closing the Sponsor will pay to the Apartment Corporation an amount equal to $4.98 per share of stock then sold under this

SEE AMENDMENT ON INSIDE COVER.

Plan and not retained by nominees of the Sponsor (see section headed "Unsold Shares") but in no event less than the aggregate sum of $100,000. Thereafter, as additional apartments are sold to persons for occupancy, the Sponsor will contribute an additional proportionate sum per share, so that there will have been paid by the Sponsor to the Apartment Corporation an aggregate sum of $211,165 when all of the apartments have been sold by the Sponsor, nominees of the Sponsor, or assignees of the Sponsor who do not occupy the Apartments for their own personal use. Regardless of the number of shares sold, however, not less than one-fourth of the balance remaining after that part of the repair fund paid at the closing will be paid by the Sponsor to the Apartment Corporation on the annual anniversary date of the Closing Date so that the entire amount of $211,165 will have been paid when either all of the shares of stock have been sold, as aforesaid, or four years have expired since the Closing Date, whichever first occurs.

All of the funds paid to the Apartment Corporation will be used for such work as the board of directors of the Apartment Corporation elected by the tenant-shareholders may deem necessary or advisable. There is no assurance that the board of directors will use said fund or any part thereof as outlined in the recommendations in Schedule AA, or that the funds set aside will be sufficient for such purpose. In the event that the funds are not sufficient, the Apartment Corporation will be responsible for any amounts which the board of directors should determine to expend, and an increase in maintenance charges or an assessment might be required. The Property is to be conveyed in its present condition and there will be no obligation on the part of the Sponsor, the Selling Agent, or the Apartment Corporation to make any repairs to any apartment or any improvements to the Property after the Closing Date.

RIGHTS OF TENANTS

SEE AMENDMENT ON INSIDE COVER.

A. Rights of All Tenants in Possession

The Apartment Corporation will sell the shares for the purchase prices set forth in Schedule B, and tenants occupying those apartments shall have the exclusive right to purchase their apartments at those prices (except for those persons who executed Purchase Agreements under the Original Plan as described on page 2) for a period of thirty days from the distribution of copies of this plan to the tenants. However, see pages 8-9 for rights of tenants in occupancy of controlled apartments.

Exhibit C, Amended Plan of Cooperative Organization.

Certain of the apartments are presently occupied under leases which expire at varying dates shown in Schedule B, and the remaining apartments are occupied by month-to-month tenants. On the date of the presentation of this Plan the sixteen (16) apartments listed in Schedule D are controlled housing accommodations ("controlled apartments"), subject to the Rent and Eviction Regulations of the City Rent & Rehabilitation Administration (the "Rent Regulations"). Schedule B sets forth the present annual rental of each controlled apartment, the amount of security if any deposited by the present tenant of all apartments and the expiration date of the lease, if any, for all apartments. Any purchaser under this Plan, other than a tenant of the apartment purchased, will purchase the apartment subject to the terms and conditions of the lease or tenancy. Any prospective purchaser should examine such lease, a copy of which is on file at the office of the Selling Agent. If any present tenant who is not a purchaser under this Plan does not voluntarily remove from an apartment upon the expiration of his lease or monthly tenancy, a purchaser wishing to occupy the apartment will be required, at his own cost and expense, to obtain possession through summary dispossess proceedings. Any purchaser who acquires an apartment occupied by a tenant, whether pursuant to a month-to-month tenancy, a lease agreement, or the Rent Regulations, will be required to pay to the Apartment Corporation the maintenance applicable to that apartment under this Plan, whether such amount received by the purchaser is greater or less than the amount received as rent from the tenant in occupancy. In addition to any requirements imposed by existing leases, purchasers of apartments subject to Rent Regulations may also be required to furnish certain decorating and other "essential services" for the occupants of those apartments. Any security held with respect to any apartments not purchased by the tenants will be transferred to the purchaser of such apartments on the Closing Date or thereafter, and the purchasers will be required to hold the security in trust pursuant to Section 7-103 of the New York General Obligations Law. Security deposits held for apartments which are purchased by the tenants in occupancy will be returned to those tenants on the Closing Date.

B. Rights of Tenants of Controlled Apartments

Those tenants in occupancy of controlled housing accommodations under the Rent Regulations, as listed in Schedule D (the "controlled apartments"), who do not purchase their apartments under this

Amended Plan or who do not thereafter vacate their apartments voluntarily, shall continue to have the right to occupy the apartments in accordance with the Rent Regulations upon payment of the maximum registered rent and compliance with the other provisions of the Rent Regulations applicable to controlled apartments. Any person who acquires the shares and proprietary lease for any controlled apartment shall take the apartment subject to the statutory tenancy and shall be required, in accordance with the Rent Regulations, to furnish those essential services required by the Rent Regulations.

Certain of the apartments listed in Schedule D may no longer be deemed to be controlled pursuant to the provisions of a Local Law adopted by the City Council of the City of New York, annexed as Schedule E of this Amended Plan and of an Amendment to the Regulations adopted by the City Office of Rent Control, annexed as Schedule F. No representation can be made, however, as to whether any decontrol occurring by virtue of a vacancy will actually be effected at any specific time in the future or whether any of the other apartments listed in Schedule D will be subject to decontrol under the provisions of the Amendment set forth in Schedule F.

No representation is made by the Sponsor that the Rent Regulations will or will not be modified after the date of the presentation of this Plan, but in the event that the Rent Regulations are modified or amended at any time after the presentation of this Plan so that all or any of the controlled apartments become decontrolled or the rights of tenants in occupancy of controlled apartments are changed or eliminated, then the rights for such tenants in occupancy described above shall be deemed to be similarly changed or eliminated as of the date of such amendment or modification.

PRICE CHANGES

SEE AMENDMENT ON INSIDE COVER.

Subject to the rights given to all tenants in occupancy (see pages 7-8), the Sponsor reserves the right, with respect to any apartment for which a Purchase Agreement has not been executed, or for which a Purchase Agreement is in default, in order to meet possible varying demands for sizes and types of apartments, or to meet particular requirements of prospective purchasers, or for any other reason, to change the number of apartments by increasing or decreasing their size, or to change the size, layout and location or to reallot the shares allocated to any of the apartments offered for sale under this Plan, so

long as such reallotment does not result in a change of a total number of shares. The Sponsor also reserves the right to change the price of any apartment at any time, except for those apartments for which a Purchase Agreement has been executed and accepted by the Sponsor, and which is not then in default. As a result, different purchasers of similar apartments may pay different prices for their apartments, but no such differences or changes will affect the number of shares allocated to a specific apartment which has been purchased, or its proportion to the total maintenance charge allotted to such apartment.

The Sponsor also reserves the right any time after the presentation of this Plan to show any of the apartments to any interested prospective purchasers, until such time as the tenant has actually executed a Purchase Agreement and made the required deposit thereunder.

COOPERATIVE CORPORATION ORGANIZATION

The Apartment Corporation has been organized pursuant to Section 402 of the New York Business Corporation Law, with an authorized capital of 45,000 shares of $1.00 par value, of which 42,400 will be allotted to the apartments sold under this Plan. Each share will be entitled to one vote, and all shares, when issued, will be fully paid and non-assessable.

Both the certificate of incorporation and the by-laws of the Apartment Corporation provide, among other things, that the primary purpose of the Apartment Corporation is to provide residences for shareholders who shall be entitled, solely by reason of their ownership of shares, to proprietary leases for the apartments.

The by-laws of the Apartment Corporation provide for not less than three nor more than seven directors to be elected by the shareholders on the basis of one vote for each share of stock. Notwithstanding the foregoing, however, in the event that the Plan is declared effective, as long as the Sponsor, nominees or assignees of the Sponsor who do not purchase the apartments for personal use or occupancy (see provisions under "Unsold Shares" at pages 23-24), shall be the holders of at least 10% of the outstanding shares and do not occupy the apartment or apartments to which such shares are allotted, then such persons as a group shall have the right to designate, prior to the election of directors at the annual meeting of shareholders, not less than one (1) nor more than one-half of the number of directors to be

elected in proportion to the percentage of total outstanding shares owned by them (rounded off to the next lowest number but not less than one).

In addition, so long as the Sponsor, nominees or assignees of the Sponsor who do not own the apartments for personal use or occupancy, shall own 25% or more of the outstanding shares in the Apartment Corporation, the board of directors will not within two years from the Closing Date, without the consent of the Sponsor or such persons (a) engage additional employees or furnish additional services not presently provided as set forth in this Plan, except as may be required by law or government regulation; (b) increase the amount of mortgage indebtedness of the Apartment Corporation, or extend, refinance or otherwise alter any mortgage (as described in the section on "Mortgage Indebtedness"), or enter into any contract for the sale or lease of the entire Property; or (c) increase the amount of the reserve for contingencies in the budget for the following year as set forth in Schedule C, except that the reserve not expended during the year may be added to that for the next year.

Promptly after the Closing Date under the Plan, the Selling Agent will cause to be called a meeting of the shareholders for the purpose of electing directors, which directors shall then elect officers for the Apartment Corporation. Until such time, all of the officers and directors of the Apartment Corporation will be attorneys or other employees of Karelsen, Karelsen, Lawrence & Nathan, Esqs., counsel to the Apartment Corporation. None of said officers and directors have any financial interest in transactions set forth in the Plan, and all will resign in favor of those elected after the Closing Date.

PROPRIETARY LEASES AND STOCK CERTIFICATES

Each Shareholder of the Apartment Corporation will be required to execute a proprietary lease for the Apartment purchased by him in the form available for inspection at the office of the Selling Agent. Proprietary leases will remain in identical form, but they may be amended by the approval of two-thirds of the tenant-shareholders. The Term of each proprietary lease will begin on the Closing Date under the Plan and will expire on September 30, 2007, unless sooner ter-

Each proprietary lease provides that a lessee not in default may cancel the proprietary lease as of September 30, 1970, or as of any September 30 thereafter, on six months' written notice, upon transfer of the proprietary lease and shares allocated to the Apartment to the Apartment Corporation. On the exercise of such right, no compensation will be paid and there will be no further obligation on the part of the shareholder-lessee.

Each proprietary lease will provide that a lessee may assign the proprietary lease or sublet the Apartment only with the consent of either a majority of the members of the board of directors of the Apartment Corporation or of the lessees owning at least a majority of record of the shares of the Apartment Corporation. The board of directors may arbitrarily refuse its consent, as long as such refusal is not based upon discrimination by reason of race, creed or color. If the lessee is the Sponsor or a nominee of the Sponsor or of an assignee of the Sponsor who does not hold the Apartment for personal use or occupancy, then only the consent of the then Managing Agent will be required. No proprietary lease may be transferred without a simultaneous transfer and assignment of all of the shares allocated to the Apartment. Neither the Apartment Corporation, the Managing Agent, nor the board of directors are required to consent to any proposed assignment or subletting, nor to give any reason for such failure to consent.

The rent to be paid under each proprietary lease will be based upon the cash requirements of the Apartment Corporation apportioned on the basis of shares held. The requirements will be determined from time to time by the board of directors but only by directors elected by the lessee-shareholders of the Apartment Corporation. In those Apartments which are subject to Rent Regulations (see Schedule D and pages 7-8), rent payable under the proprietary lease may be greater than that which may be collected under the Regulations. In such event, the owner of the proprietary lease who is other than the tenant in occupancy, will be required to pay the difference.

The proprietary lease will require that each proprietary lessee will be responsible for keeping the interior of the Apartment in good repair, decorating the Apartment and maintaining or replacing all plumbing fixtures, lighting fixtures, refrigerators, air conditioning

units, and other similar equipment. Special electrical appliances, which may require heavy duty lines, or impose a burden upon the existing electrical facilities, such as air conditioning units, electric ranges or refrigerators, washing machines or dryers and heating panels may not be installed without the prior consent of the board of directors elected by the tenant-shareholders. There is no assurance that such consent will be given.

The proprietary lease with any tenant in occupancy who purchases the shares allocated to the Apartment occupied by him will, on the Closing Date, supersede any prior existing lease, rental agreement, statutory tenancy, or other arrangement.

Each proprietary lease will contain a provision making it subordinate to any and all existing or future mortgages on the Property. The Apartment Corporation will have a prior continuing lien upon all of the shares held by any proprietary lessee to secure the payment of all obligations due under the proprietary lease or any other indebtedness of the proprietary lessee to the Apartment Corporation.

The proprietary leases will also include provision for the pledge and deposit of the lease which may be made with the assignor of any Lessee (except for the Sponsor or his nominees) or with a bank or lending institution.

Each proprietary lease will also contain provisions for termination after default upon (a) failure to pay any rent or other charge due for one month or to perform any other covenant or obligation under the proprietary lease, (b) cessation of ownership of the accompanying shares by any proprietary lessee, (c) an attempted assignment or subletting without full compliance with the terms of the proprietary lease, (d) adjudication of the proprietary lessee as a bankrupt or the commission of any act of insolvency or bankruptcy, (e) a determination by four-fifths of the board of directors and two-thirds of the shareholders that the conduct of any proprietary lessee is objectionable and undesirable. In the event of a default, the shares held by a proprietary lessee will be deemed cancelled and possession of the Apartment must be surrendered to the Apartment Corporation. In such event, the proprietary lessee will remain liable for all charges as if the proprietary lease had not been terminated until the shares and proprietary lease are sold by the Apartment Corporation to a new purchaser.

The Apartment Corporation may also terminate all proprietary leases at any time, upon the affirmative vote of two-thirds of the board of directors and the holders or at least 80% of outstanding shares in the Apartment Corporation.

PURCHASE AGREEMENTS AND ESCROW DEPOSITS

The form of Purchase Agreement to be used under the Plan is set forth as Schedule G. Each purchaser will be required to execute a Purchase Agreement and, subject to the rights of controlled tenants under the Rent Regulations, no Purchase Agreement will be binding upon the Apartment Corporation or the Sponsor until a copy is delivered to the Purchaser after execution by the Apartment Corporation and by the Sponsor. Any Purchase Agreement not countersigned within thirty days after receipt by the Selling Agent will no longer be binding upon the Purchaser, and all moneys paid by the Purchaser under that Purchase Agreement will be promptly refunded, without interest.

Except for the Purchasers under the Original Plan (see page 2) and except for those Apartments for which the Sponsor shall make a change in the offering price (see pages 9-10), each purchaser will be required to pay the purchase price set forth in Schedule B in order to provide funds to enable the Apartment Corporation to acquire title to the Property. In accordance with the Purchase Agreement, at the time that any prospective Purchaser executes such Agreement, he will be required to pay 10% of the total purchase price. The balance of the purchase price must be paid within 30 days after notice is furnished to the Purchaser that the Plan has become effective.

The Sponsor will hold all monies received by it, directly or through its agents, employees or escrow agents, in trust, until actually employed in connection with the consummation of the Plan as herein described. In the event that insufficient funds are raised through the offering or otherwise to effectuate the purchase of the property and consummation of the Plan or if the Plan is abandoned or withdrawn for any reason, or if title to the property is not acquired by the corporation on or prior to January 31, 1969, for any reason whatsoever, then such monies shall be fully returned, without interest, to the purchasers. The amount paid by an applicant for stock subscription will be deposited in a special non-interest bearing account to be estab-

lished solely for such purpose under the name of "1050 Park Avenue —Purchase Account," in The Bank of New York, 360 Park Avenue, New York, N. Y., to be held pursuant to the escrow agreement set forth in Exhibit H, and in accordance with the provisions of Section 352(h) of the General Business Law of the State of New York. The funds held by the Bank pursuant to the Escrow Agreement shall be paid on the closing of title to the Property at the direction of the Apartment Corporation upon the instructions of its attorneys Karelsen, Karelsen, Lawrence & Nathan, Esqs., and only for the purposes set forth in this Plan.

Time shall be deemed to be of the essence in the making of payment of the balance of the purchase price under the Purchase Agreement. In the event that any purchaser shall fail to make any such payment within the time required, then the Sponsor will have the right on 5 days written notice of default to cancel such Purchaser's Purchase Agreement and to receive from the Bank under the Escrow Agreement, as stipulated and liquidated damages, all funds theretofore deposited by said Purchaser under the Purchase Agreement provided such default is not cured within said 5 days. Alternatively, either the Sponsor or the Apartment Corporation may sue any Purchaser for the balance of the purchase price.

ESTIMATED INCOME AND EXPENSES

The Selling Agent has prepared, at the request of the Sponsor, an estimate of the income and expenses of the Apartment Corporation for its first full year of cooperative operation, which is set forth as Schedule C. For comparison purposes, there is also set forth a certified statement of the operating expenses for the Property for the eleven month period ending December 31, 1963 and for the calendar years ending December 31, 1964, 1965, 1966 and 1967, prepared for the Sponsor by Sigmund Weiss, a certified public accountant. In the opinion of the Sponsor, certain of the expenses for the time prior to April 27, 1966, the date on which the Sponsor acquired title to the Property, do not reflect normal expenditure control and operation expenses for the Property in view of the fact that the Property was then operated by a temporary receiver appointed by a court and not by a fee owner of the Property.

The estimate of income and expenses set forth in Schedule C has been prepared on the basis of a continued maintenance, operation and

staff for the building as of the date of the presentation of the Plan, and is based upon the experience of the Selling Agent in the management and operation of similar cooperative apartment buildings in New York City. While the Selling Agent believes, and has set forth in writing in a letter available at its office, that the estimates are dependable, because of the possibility of unforeseeable changes in the economy or other factors, the estimate of income and expenses cannot be considered to be a representation, guaranty or warranty of any kind as to the actual income, expenses, maintenance charges or income tax deductions. Accordingly, the board of directors may determine to provide for reserves not reflected in Schedule C or to increase the maintenance charges for any period after the Closing Date (except for those limitations described at page 11).

The estimate includes real estate taxes payable in an amount computed at the 1968/69 assessed valuation for the Property and the tax rate for the prior tax year of $5.11. The assessed value for New York City real estate tax purposes for the tax year 1968/69 is $1,440,000, of which $615,000 is allocated to land and $825,000 is allocated to the building. An application has been instituted for reduction of this assessment, but there can be no representation as to whether or not any reduction will be effected in whole or in part. The assessed valuation for New York City real estate tax purposes for the tax year 1967/68 is $1,350,000, of which $530,000 is allocated to the land and the remainder to the building. The assessed valuation for the prior tax year (1966/67) was $1,290,000 of which $530,000 was allocated to the land and the remainder to the building and the tax rate for that year was $4.994 per $100 so that $64,422.60 in tax was paid for the fiscal year ended June 30, 1967. The assessed valuation for 1965/66 was $1,255,000, of which $530,000 was allocated to land and the balance to the building. The tax rate for that year was $4.63 per $100 and the total tax paid was $58,106.50. There can be no assurances that either the assessed valuations of the Property or the tax rate, or both, will not vary in the future.

The payroll amount for the 19 building employees included in the estimate is based upon the current method of staffing and allocation of building employees. On the date of the presentation of this Plan, there is an operator for each passenger elevator from 7 A.M. to midnight and one operator who serves both passenger elevators from

midnight to 7 A.M. The two service elevators are separately manned from 7 A.M. to 8 P.M. and are serviced by a single operator from 9:30 P.M. to midnight. Between 8 P.M. and 9:30 P.M. the service elevator operator relieves the doorman and passenger elevator operators. A doorman is on duty from 9 A.M. to 2 A.M. each day. The main entrance door is locked at midnight to facilitate security for the building, and the service entrance is locked at 6:30 P.M.

INCOME TAX DEDUCTIONS

The Plan has been designed to give to each proprietary lessee the benefit of those income tax deductions allowed to tenant-stockholders of cooperative housing corporations under the present provisions of Section 216 of the Internal Revenue Code and Section 615 of the New York Tax Law and Section T46-15.0 of the New York City Personal Income Tax Law. Under the applicable provisions of those laws, the price paid for each block of shares under the Plan must bear a reasonable relationship to the portion of value of the equity of the Apartment Corporation in the Property attributable to the Apartment to which that block of shares is allocated. The Selling Agent has advised the Apartment Corporation that, in its opinion, such a reasonable relationship exists under the prices set forth in Schedule B as they may be modified with respect to certain purchasers under the Original Plan (see page 2). On the basis of the aforesaid opinion of the Selling Agent, the Apartment Corporation has been advised by its counsel, Karelsen Karelsen Lawrence & Nathan, Esqs., that, in their opinion, if the Plan becomes operative under its terms, so long as 80% or more of the gross income of the Apartment Corporation is derived from qualified tenant-stockholders, the Apartment Corporation will qualify as a cooperative housing corporation under the present applicable state, federal and city tax laws.

The estimated amounts which will be deductible for income tax purposes are set forth in Schedule B, but such amounts may increase or decrease in proportion to the amounts paid by the Apartment Corporation for interest on outstanding mortgages or for real estate taxes. In addition, the exact amount of actual tax savings will depend upon the amount allowed by the appropriate taxing authorities and the individual taxpayer's tax bracket. Neither the Sponsor, the Selling Agent, nor counsel to the Sponsor or the Apartment Corpora-

tion, makes any warranty or representation as to the allowability by any taxing authority of the deductions, at any time in the future, and none of them shall be responsible for the discontinuance or disallowance of any part or all of said deduction at any time, whether by reason of a change in the applicable law, administrative regulations or otherwise.

As indicated in the Section on "Mortgage Indebtedness" (see pages 22-23), one of the mortgages on the Property which will remain a lien on the Closing Date requires certain payments for interest accrued for a period prior to the time that the Property was acquired by the Sponsor. While the amounts paid for such interest may be reported as interest for the purposes of income tax deductions, the taxing authorities may not permit the deductibility of such amounts. These amounts are not reflected in the estimated amount of tax deductions for the maintenance to be paid by the tenant-shareholders, but in the event that such amounts are deductible, then the amount deductible by each tenant-shareholder would be increased by his proportionate share of such payment for that interest. Under the share allocations set forth in Schedule B, such allowance would result in an annual increase in available deductions of 28¢ per share up to the end of the calendar year 1983 and $1.336 per share during 1984.

FINANCIAL DETAILS

The Sponsor has agreed to convey title to the Property on the Closing Date under the Plan on the basis of the following financial plan:

Aggregate Purchase Price of Shares		$3,521,320
Plus: Mortgage indebtedness		2,045,779
Total Purchase Price		$5,567,099
Less:		
Working capital	$ 25,000	
Repair Fund (after all shares sold) ...	211,165	
Mortgage indebtedness	2,045,779	2,281,944
Total Proceeds to Sponsor		$3,285,155

Exhibit C, Amended Plan of Cooperative Organization.

The aggregate purchase price will be paid as follows:

1. The entire cash proceeds received by the Apartment Corporation under the Plan from the sale of its shares will be paid to the Sponsor, including the funds then on deposit in the Escrow Account (see pages 14-15) and the funds furnished pursuant to the Purchase Agreement, *less*

(a) the sum of $25,000 (increased or decreased by closing adjustments) to constitute the initial working capital of the Apartment Corporation, *and*

SEE AMENDMENT ON INSIDE COVER.

(b) the sum of $4.98 per share sold under this Plan (but not less than $100,000) as the fund for repairs and improvements described in pages 6-7.

2. In the event that all of the shares of the Apartment Corporation offered under this Plan are not sold, then the Sponsor will be paid (1) a sum equal to the proceeds of those shares which are sold, less the deductions set forth above, and (2) all of the unsold shares together with the proprietary leases, as described in the section headed "Unsold Shares."

3. The Apartment Corporation will take title to the Property subject to the then principal unpaid balance of the existing mortgages described under the heading "Mortgage Indebtedness."

4. The Apartment Corporation will pay to the Sponsor, as additional consideration, any amounts then on deposit in the Escrow Account under defaulted Purchase Agreements.

5. Adjustments will be made as of the Closing Date for assignable insurance policies, real estate taxes, water and sewer charges, rent and other income, fuel, payroll and vacation pay, mortgage interest and amortization payments, and all assignable fees, charges or expenses. In the event that after balancing such closing adjustments there shall be a net adjustment in favor of Sponsor and such adjustment shall exceed 50% of the amount to be set aside for working capital of the Apartment Corporation then such excess shall be paid by the Apartment Corporation to the Sponsor in monthly installments of equal amounts over a period of sixty (60) months following the Closing Date, not bearing interest and reflected in a series of unsecured promissory notes for that amount.

6. The Sponsor will pay for all expenses incurred by the Apartment Corporation up to the Closing Date, and all expenses incurred in connection with the closing, including, but not limited to, unpaid legal or accounting fees, survey charges or title insurance costs, printing and filing fees and any other taxes or fees in connection with the transfer of title of the Property to the Apartment Corporation.

On the Closing Date, the Apartment Corporation will have no indebtedness except for the mortgages to which title to the Property will be subject (as described under the heading "Mortgage Indebtedness"), the electrical installation contract described on pages 5-6, the management agreement described under the heading "Management Agreement," and the service or maintenance contracts listed in Schedule I.

MORTGAGE INDEBTEDNESS

At the Closing Date, the Property will be conveyed to the Apartment Corporation subject only to the following mortgage indebtedness.

Refinanced First Mortgage

The refinanced first mortgage on the Property which is presently held by Greenwich Savings Bank, New York, New York under a consolidation and extension agreement dated September 25, 1967, a copy of which is on file and available for examination at the office of the Selling Agent, provides for a total original lien of $1,100,000. The mortgage bears interest at the rate of 6% per annum, and interest and amortization is payable in four quarterly installments of $22,000 each year until the 15th anniversary of the mortgage, falling in 1982, when the principal balance will then be due and payable. The quarterly installments will be applied first to the payment of interest at 6% and then to the reduction of principal. Any payments of amortization made since the time of the consolidation and extension agreement up to the Closing Date, shall be added to the adjustments to be made at the Closing Date as described on pages 19-20. At the maturity date of the mortgage, there will remain unpaid principal in the amount of $570,819.04. No representation can be made at this time with respect to the availability, cost or terms of any mortgage refinancing which may then be required. In the event that no refinancing were then available, the amount required to be paid to satisfy the mortgage in 1982 would be equal to $13.46 per share.

The first mortgage provides that it may be prepaid on any interest date falling after ten years from the time it is made, upon thirty days written notice and payment of a penalty of 4% of the principal sum prepaid, which penalty shall decline by ½ of 1% each year thereafter until maturity.

There are available for inspection at the office of the Selling Agent copies of the consolidation and extension agreement for the consolidated first mortgage lien.

Reconsolidated Second Mortgage

The Property will also be subject to a reconsolidated second mortgage pursuant to a consolidation and extension agreement dated September 25, 1967 which agreement incorporates under one instrument two separate mortgage liens.

(a) The reconsolidated subordinate mortgage incorporates the consolidated subordinate mortgage held by Mrs. Lois Morrill of Alexandria, Virginia, in the reduced aggregate principal sum of $441,129 and a further lien for past due interest on certain prior outstanding mortgages (as a result of non-payment long before the Sponsors took title to the Property), which has already been reduced by agreement to $289,150 and which amount was reduced as of June 1, 1967 to $280,150, and was further reduced at the time of the consolidation and extension so that at the Closing Date, this outstanding lien will not exceed $254,650. Any payments made in reduction of the lien for past due interest below said amount of $254,650 up to the Closing Date will be added to the adjustments to be made at the closing in favor of the Sponsor as described on pages 19-20.

Payment of principal and the remaining amount due for past due interest is due on April 26, 1984. Payments for current interest on the principal sum will be required in quarterly installments of $5,607.16 on the 15th of February, May, August, and November of each year until maturity, amounting to interest on the principal sum at the rate of 5.1% per annum.

Payments will be required for the past due interest on this part of the Reconsolidated Second Mortgage in semi-annual installments to be paid on January 1 and July 1 of each year as follows: installments of $6,000 each time until January 1, 1984 and a payment of $50,650 on April 26, 1984 at which payment the past due interest will have been paid in full. The amounts to be paid for past due interest do not themselves bear interest.

There are no amortization payments required for the principal amount of this portion of the Reconsolidated Second Mortgage and the entire principal amount of $441,129, together with the final payment for past due interest of $50,650, will be due on April 26, 1984, at which time the Apartment Corporation will be required to pay said sum or obtain the required amount by additional mortgage financing. No representation can be made at this time with respect to the availability, cost or terms of any mortgage refinancing which may be required for this portion of the Reconsolidated Second Mortgage at that time. To the extent that the Apartment Corporation is not able to obtain such amount by mortgage refinancing, additional funds might have to be obtained from the persons who are then the stockholders of the Apartment Corporation.

Any portion of these payments, whether of principal or past due interest, may be prepaid in whole or in part at any time without penalty. In the event of prepayment of a portion of the principal sum due, then the current interest payments due in quarterly installments will be reduced on an annual basis by an amount equal to 5% of the principal amount prepaid.

(b) The Reconsolidated Subordinate Mortgage also incorporates the subordinate mortgage in the principal sum of $250,000 previously held by Ruby Campbell of Coesse, Indiana, the former record owner of the Property from whom the Sponsor acquired the Property. This mortgage indebtedness represented a portion of a purchase money mortgage given upon the acquisition by the Sponsor.

This portion of the Reconsolidated Subordinate Mortgage bears interest at the rate of 6% per annum, which is payable quarterly on the 15th days of February, May, August, and November of each year. No amortization payments are required and the entire principal sum will be due and payable on April 27, 1981, at which time the Apartment Corporation will be required to pay said sum or obtain the required amount by additional mortgage financing. No representation can be made at this time with respect to the available cost or terms of any such mortgage refinancing which may be required for this portion of the Reconsolidated Second Mortgage at that time.

This portion of the Reconsolidated Second Mortgage may be prepaid at any time without penalty.

In the event that the Apartment Corporation is not able to obtain mortgage refinancing upon the maturity of the principal payments

due under the Reconsolidated Second Mortgage, then during 1981 it would be required to pay a total of $250,000, and during 1984 it would be required to pay a total of $491,779, both exclusive of regular interest payments due for those years. These amounts would be equivalent to the sum of $5.90 during 1981 and the sum of $11.60 during 1984 for each of the shares of stock to be sold under this Plan.

There are available for inspection at the offices of the Selling Agent copies of the reconsolidated second mortgage which will continue to be a lien on the Property after the Closing Date.

Other Indebtedness

No additional mortgage indebtedness will be a lien on the Property on the Closing Date, but the Apartment Corporation may also be indebted to the Sponsor for certain of the closing costs not paid on the Closing Date as described under the heading "Financial Details" on pages 18-20.

UNSOLD SHARES

At the Closing Date, the Sponsor will furnish an individual or individuals, who are residents of New York State, to purchase those shares of the Apartment Corporation allocated to Apartments which are not sold or the subject of executed Purchase Agreements, and who will execute proprietary leases for the Apartments to which said shares have been allocated. The individuals will not necessarily acquire the Apartments for personal occupancy and may sublet or resell the Apartments. The sale or assignment of shares and the leases held by such individuals or the subletting of the Apartments may be made to reputable persons of good financial standing, subject only to the approval of the then Managing Agent without the necessity for the consent or approval of either the board of directors or the remaining proprietary lessees. All sales of unsold apartments by the Sponsor will be made pursuant to the then current amended offering plan

If any such individual shall fail to pay maintenance or other charges for the Apartment, then the Apartment Corporation will have the same rights and remedies as against any defaulting proprietary lessee. The Sponsor will remain responsible for the performance of those proprietary leases executed by such individuals until subsequently assigned to a Purchaser other than a nominee of the Sponsor.

No bond or other security will be posted either by the nominees or by the Sponsor, and the Sponsor's ability to perform and furnish any necessary funds will depend upon their respective existing financial condition. The Sponsor may enter into an agreement with any one or more nominees to require such nominee to pay over to the Sponsor any profit resulting from the resale or subletting of any of the Apartments held by the nominee.

CONSUMMATION OF PLAN

This Plan will be declared effective by the Sponsor, and will thereafter become operative in accordance with its terms if, within eight months or less from the date of its presentation, at least 80% of the shares in the Apartment Corporation have been sold under executed Purchase Agreements, under which the required deposits have been made.

The Sponsor also reserves the right to declare this Plan effective at any time when more than 40% but not less than 80% of the Apartments have been purchased.

The Sponsor also reserves the right to withdraw or abandon this Plan at any time before it is declared effective. In the event of such abandonment, all deposits made under Purchase Agreements shall be returned by the Escrow Agent, without interest. This Plan will be declared effective by written notice to all purchasers. Once this Plan has been declared effective, it will not thereafter be abandoned. The notice furnished by the Sponsor or the Selling Agent, which will declare this Plan effective, shall specify a Closing Date not less than 30 days after such notice.

CLOSING AND TRANSFER OF TITLE

On the Closing Date, fee title to the Property will be transferred to the Apartment Corporation by a bargain and sale deed with covenants against the grantor's acts. The title so conveyed will be insured by City Title Insurance Company in the aggregate amount of the consideration paid, subject only to the following exceptions: (a) the mortgage indebtedness described under the heading "Mortgage Indebtedness" (pages 20-23); (b) rights of tenants of the Property; (c) survey conditions, provided they do not prevent the use of the building as an apartment house; (d) covenants, restrictions, agreements or

reservations of record, and zoning and building laws, restrictions and regulations on the Closing Date, which do not prevent the present use of the Property; and (e) service or maintenance contracts set forth in Schedule I, the Management Agreement described herein (page 25) and the electrical contract described on pages 5-6.

At the closing, adjustments will be made of those items described on page 19. The amounts to be paid for the initial working capital and repair fund will be held in escrow by Karelsen, Karelsen, Lawrence & Nathan, Esqs., counsel for the Apartment Corporation in the name of the Apartment Corporation pending the instructions of the board of directors to be elected by the shareholders of the Apartment Corporation (see pages 10-11), or in the event of an emergency requiring expenditures, in the discretion of the Managing Agent.

On the Closing Date, there will be in effect and transferred to the Apartment Corporation a multiple peril insurance policy for the Property, including fire insurance with extended coverage in the amount of $2,800,000 for the building and $30,000 for personal property; rental value insurance for $360,000 (to which an 80% co-insurance clause will apply); public liability and property damage in limits of $3,000,000; legal water damage insurance in the amount of $10,000; paymaster robbery in the amount of $2,000; boiler insurance in the limit of $100,000 (including repair and replacement).

MANAGEMENT AGREEMENT

On the Closing Date, the Apartment Corporation will enter into an agreement with Pease & Elliman, Inc. to act as the Managing Agent of the Property for a period of three years from that time. The Managing Agent will receive as its compensation for all such service, compensation at the rate of $9,000 per annum. The Agreement will not be assignable by the Managing Agent without the consent of the Apartment Corporation. A copy of the Agreement can be examined at the office of the Selling Agent.

REPORTS TO SHAREHOLDERS

All shareholders of the Apartment Corporation will receive the following reports and statements:

Within three months after the end of each calendar year, a statement of the accountants for the Apartment Corporation of the amount deductible per share under the then income tax laws.

Within three months after the end of each fiscal year, an annual report of operations and balance sheet of the Apartment Corporation, certified by an independent certified public accountant.

Each year, notice of each annual meeting of shareholders of the Apartment Corporation, for the purpose of electing a board of directors.

PARTIES INTERESTED IN THE TRANSACTION

The Sponsors own the Property as tenants in common in the following undivided interests: Peter Jakobson, 50%, John R. Jakobson, 25%, Arthur D. Emil, 20%; and Lawrence A. Kobrin, 5%.

Peter Jakobson is engaged in the investment in and ownership and management of real estate. John R. Jakobson is a partner in a member firm of the New York Stock Exchange, and his principal occupation is his participation in the security trading activities of that firm. John R. Jakobson and Peter Jakobson are brothers. Arthur D. Emil and Lawrence A. Kobrin are practicing attorneys and the members of Emil & Kobrin. All of the Sponsors are residents of New York City.

The exact profit to be realized by the Sponsors upon the sale of the Property to the Apartment Corporation cannot now be determined in view of the uncertainty of future market conditions in the sales of cooperative apartments and losses which may be sustained by reason of the responsibility of the Sponsors for performance of proprietary leases acquired by individuals designated by them at the Closing. If the offering made under this Plan is successful and all of the apartments, including the rent controlled apartments, are sold for the prices set forth in Schedule B, and the expenses incurred by the Sponsors in making this offering are not abnormal nor the time for the consummation of this Plan longer than expected, then the Sponsors may be expected to realize a very substantial profit.

1050 Tenants Corp., the Apartment Corporation, was organized on June 6, 1967 by Karelsen Karelsen Lawrence & Nathan, Esqs., using Mildred Sussman, an employee of said firm, as sole incorporator.

None of the members of the law firm of Karelsen Karelsen Lawrence & Nathan, Esqs., and none of their employees, have any

financial interest in the property or in this Plan, except that said firm are the attorneys who will represent the Apartment Corporation until the first meeting of shareholders after the closing date. None of said members or any of their employees will receive compensation for acting as incorporator, shareholder, directors or officers of the Apartment Corporation and all of the fees and disbursements of Karelsen Karelsen Lawrence & Nathan, Esqs., in connection with their services rendered under this Plan will be paid by the Sponsor.

Pease & Elliman, Inc., the Selling and Managing Agent, is a licensed real estate broker, which has been in the real estate business since 1897 and has organized and manages many cooperatively owned residential buildings in Manhattan. As Selling Agent, the firm will earn commissions for the sale of the Apartments under this Plan. In addition, if the Plan is consummated, the firm will become the Managing Agent under the Plan. The firm has no other financial interest in the Plan and no other financial interest, past, present, or future, in the Property.

The firm of Emil & Kobrin, Esqs., of which Messrs. Emil and Kobrin are the partners, serves as attorneys for the Sponsors. Said firm will be compensated by the Sponsors for services rendered, apart from and without regard to the profits which may be realized in connection with the consummation of the Plan. Said firm also serves as general counsel to the Selling Agent but will not represent the Selling Agent in any capacity concerned with this Plan.

Eugene Belkin, the consulting engineer whose report appears in Schedule A, is a licensed professional engineer in New York State and in five other states. He received a bachelor of civil engineer degree from New York University and a master of civil engineering from MIT. He is vice president of Macarthur Construction Co., a member of the American Society of Civil Engineers and the New York State Society of Professional Engineers, and holds a certificate of qualification from the National Counsel of State Boards of Engineering Examiners. He has received a fee for his services in the preparation and rendering of the report but has no financial interest in the Property or in this Plan.

Exhibit C, Amended Plan of Cooperative Organization.

DOCUMENTS ON FILE

Copies of the following documents are on file with the Selling Agent and may be examined at their offices, 60 East 56 Street, New York, New York, during normal business hours by prospective purchasers:

Certificate of Incorporation, by-laws and specimen stock certificate of the Apartment Corporation.

Form of Proprietary Lease.

Form of proposed Management Agreement with the Managing Agent.

Escrow Agreement with The Bank of New York.

Consolidation and extension agreement for first mortgage held by Greenwich Savings Bank.

Consolidation and extension agreement for mortgage held by Lois Morrill and Ruby Campbell.

Existing leases for professional occupancy and other space.

Report of physical inspection made by consulting engineer and supplementary letters.

Report of The J. G. White Engineering Corporation.

Opinion of counsel relating to income tax deductibility.

Letter from counsel relating to deposit of funds upon closing.

Commitment from Morelite Electrical Service, Inc. with explanatory material.

GENERAL COMMENTS

This Plan contains a fair summary of the material provisions of the various documents to which reference is made. Any information, data or representations not referred to or contained in this Plan should not be relied upon. This Plan does not knowingly omit any material fact or contain any untrue statement of any material fact, and there are no inconsistencies between this Plan and any of the documents to which reference is made. In the event, however, of any such inconsistencies, the terms of this Plan shall prevail.

There are no lawsuits or other proceedings now pending, or any judgments outstanding, either against the Sponsor or the Apartment Corporation, which might become a lien against the Property.

Exhibit C, Amended Plan of Cooperative Organization.

No person has been authorized to make any representation not expressly contained in this Plan, and this Plan may not be changed or modified orally by any person. There will be no discrimination in the offering of the shares made hereunder on the basis of race, creed, color or national origin.

Dated: New York, New York, May 10, 1968.

PETER JAKOBSON, JOHN R. JAKOBSON, ARTHUR D. EMIL and LAWRENCE A. KOBRIN,

Sponsor

PEASE & ELLIMAN, INC.,

Selling Agent

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE A

REPORT OF INSPECTION

1050 PARK AVENUE

NEW YORK, NEW YORK

Eugene N. Belkin, P.E. September 5, 1967

GENERAL: This building, built about 1923, is a 14 story and penthouse fire proof structure. During the years since it was completed, starting in the late 1930's to 1962, many alterations have been completed.

These, in the main, have consisted of re-subdividing of various large apartments, combining of servants' quarters in the penthouse, into apartments, boiler conversion to oil and installation of a sprinkler system in stair #1 and firetower #1 to meet requirements of the Multiple Dwelling Law.

The latest Certificate of Occupancy (#56682) issued Nov. 16, 1962 covers all previous work. Nothing subsequent to that date has been filed in the Building Department. As of August 29, 1967 there were no Fire Department violations listed against the building. Certain minor violations of the Building Department or the Air Pollution Department were then on record and, while the work has reportedly already been completed to cure them, the formal dismissals were not yet posted.

The actual inspection was made with a particular view toward determining those items requiring attention at this time and those which might require attention in the near future. With this in mind, the following building elements were checked:

1. Electrical System
2. Heating System
3. Plumbing System

Exhibit C, Amended Plan of Cooperative Organization.

4. Elevators
5. Masonry Exterior
6. Windows
7. Roof
8. Kitchen Equipment

1—ELECTRICAL SYSTEM: A complete wiring of 25 of the 64 apartments was accomplished a few years ago. This involved the installation of a new 1800 ampere service and metering equipment for 41 apartments of which 25 meter and feeders to the apartments have been installed. To complete the rewiring an additional 1000 to 1200 ampere service plus new feeders for 16 apartments together with new apartment cut-out boxes and individual air conditioning and appliance outlets would be necessary to take care of tenant requirements.

In addition to the preceding, the remaining 23 apartments would require new metering equipment, feeders and outlets. It should be pointed out that this rewiring is *not* now required because of any deficiency or unsafe condition that now exists. It is an item that probably will be required by the tenants' demands for 208 volt appliance and air conditioning outlets in the future.

The commitment arrangement with Morelite Electrical Service, Inc., dated August 30, 1967, would appear to furnish the requirements for such service.

2—HEATING SYSTEM: The present boilers were converted from coal-fired operation in 1937 and the oil burners were replaced again in 1949, together with the fuel pump. The entire system is in operating condition, but the age of the boilers may necessitate extensive retubing in the future.

The heating distribution system at present is not in need of repair. However, the original construction

practice of burying the branch piping in the cinder fill may lead to corrosion of this piping and replacement whenever leaks are detected.

3—PLUMBING SYSTEM: The house pumps, sump pump, roof tank and structure (a small opening on the side of the roof tank is present but does not leak) are in working order. The house pumps are original building equipment and may require replacement in the near future.

The water distribution system is of galvanized steel. This will present problems in the future and will require maintainance as leaks and stoppages occur. At present the system is in working order.

The plumbing fixtures are somewhat antiquated by modern standards, but they are serviceable and in working condition. Some crazing of the porcelain is to be expected in 45 year old fixtures.

Based upon the type of plumbing in use, the age of the building and the reports of experience over the past several years, it can be expected that within the next several years portions of existing plumbing pipes will have to be replaced. Such replacements would primarily involve branch lines and small risers. Replacements of this type are ordinarily done from time to time as convenient and required and not as one major replacement throughout the building. As indicated above, on the basis of the experience in this building for such repairs over the past several years, it would appear that an annual expenditure of between $5,000 and $6,000 would be adequate for the continued maintenance of the plumbing facilities. On the basis of current projections, this amount would continue to be required for approximately 14 or 15 years until generally all pipes had been replaced.

4—ELEVATORS: The 2 passenger and 2 service elevators are in good working order and are serviced regularly.

The wire cables on the service C-D elevator may require replacement within a year. Nothing of a major repair is foreseen for 3 to 5 years.

5—Masonry Exterior: Attention is required to those sections of exterior masonry where open joints have caused the leaks in several apartments during severe rainstorms.

An experienced waterproofing contractor should cut out and repoint all such areas from a hanging scaffold.

It is estimated that the cost of the required work would not exceed $7,500.

6—Windows: The existing wood sash and frames vary in condition from good to poor. Some of the sash should be replaced promptly, since the glass is poorly secured. Some sections of the frames are also in need of repair. When these repairs are completed, the exterior of all frames and sash should be painted. It is estimated that the cost of the required work would not exceed $15,000.

7—Roof: Generally the condition of the roof is good, but prompt attention is required to various sections of fibre base flashing which have cracked and separated at the roof level, leving unprotected holes and open joints. In addition, the few blistered sections of the upper roof should be repaired as well as the replacement of any missing or broken roofing tile on the main roof. The roof drains should be cleaned and any asphaltic material that has partially covered them should be removed. All pipe flashing should also be checked. In addition, certain portions of the skylight protective iron mesh need rehabilitation and the owners have advised that the materials required to be fabricated for this purpose have already been ordered and will be installed soon.

None of the above items is of a major nature. It is estimated that the cost for all of these items will not exceed $2,500.

Exhibit C, Amended Plan of Cooperative Organization.

8—KITCHEN EQUIPMENT: It should be expected that eventual replacement will be required of the refrigerators, particularly those that are 10 years old and older. Those older than 5 years have gone beyond the factory warranty and can be expected to give rise to additional service costs.

The ranges appear to be in working order, although somewhat antiquated in appearance.

CONCLUSIONS:

1—*Items in need of prompt attention.*

(a) Masonry waterproofing of sections of exterior wall where water has penetrated during severe rains	Estimated cost	$ 7,500
(b) Miscellaneous roof repairs	Estimated cost	$ 2,500
(c) Replacement of defective wood sash, repair of frames where required and exterior painting of all windows (frames and sash)	Estimated cost	$15,000

2—*Items which may require attention in the near future.*

a. Plumbing water piping.

b. Heating branch piping buried in concrete fill.

c. Boiler tubes.

d. Wire ropes on all 4 elevators.

e. Refrigerators.

f. House pumps.

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE AA

Extract From Report Submitted by The J. G. White Engineering Corporation dated October 31, 1967.

(See page 3 for description of Report.)

GENERAL CONCLUSIONS

The apartment building known as 1050 Park Avenue was inspected by engineers of The J. G. White Engineering Corporation on October 18, 20, and 24, 1967, in order to:

1. Determine the present condition of building;
2. Determine repairs which should be made at present to maintain the integrity of the building and its facilities;
3. Estimate the probable cost of these repairs deemed necessary at this time.

The building, a two-wing fourteen-story and penthouse structure located at the southwest corner of Park Avenue and East 87th Street, was built in the early nineteen twenties. At present the building contains a total of sixty-four apartments. Sixty of these apartments are occupied for residential purposes and four are used as doctors' offices. It is our opinion that the building was well designed and that it was constructed of high quality material. The apartment building as a whole appears to be in satisfactory condition when due consideration is given to its age. We have summarized the conclusions and recommendations which have resulted from our inspection of the building and its facilities below. These conclusions and recommendations are discussed in more detail in the body of the report.

The electrical equipment and facilities were found to be in satisfactory condition. Some upgrading of the alternating current electrical system has been done recently. Further upgrading of the alternating current system is contemplated after the Plan of Cooperative Organization takes effect. A commitment has been obtained from Morelite Electrical Service, Inc., for the performance of certain electrical work required to accomplish additional upgrading. It is our opinion that the Morelite commitment is general in nature and we, therefore, recommend that the Apartment Corporation obtain a new commitment from the Sponsor which describes specifically the installation which will be

made for the contract price. The portions of the electrical system which will not have been replaced (such as the direct current system, interior wiring of apartments, etc.) by the upgrading operations mentioned above, in our opinion, do not require repair or replacement at this time. Annual maintenance expenditures in the next few years should be similar to those expended in the last few years.

Certain parts of the mechanical equipment and services were found to be in need of modification or replacement. The heating plant must be modified so that it complies with Local Law 14 and certain minor items must be repaired or replaced. The domestic water distribution piping appears to be in an advanced state of deterioration. It is our opinion that portions of this piping should be replaced now in order to eliminate repair costs and tenant inconvenience experienced by the frequent major leaks which are occurring and undoubtedly will continue to occur in this piping. Most of the mechanical facilities consist of equipment installed when the building was built and, therefore, may require major repair or replacement at any time. Except for those items mentioned above and described in more detail in the body of the report, our examination found the mechanical facilities in satisfactory condition. Expenditures for maintenance which have been realized over the past few years should indicate routine expenditures which can be anticipated over the next few years.

The overall condition of the structural components of the building is good. The extensive maintenance and repair work detailed in the body of this report for exterior masonry, windows and doors and roofing, however, should be carried out as soon as possible. After this work is properly performed, we do not foresee any extraordinary expenditures in connection with the structure. It is recommended that a program of inspection and maintenance of the building exterior be established and funds allotted to operating expenses for the performance of required work in order to preclude the possibility of future deterioration. The type of maintenance recommended in this report apparently has not been performed recently and, therefore, operating expenses of the last few years may not reflect the amount that should be anticipated for a proper maintenance program in the future.

The estimated cost of work which in our opinion should be performed at this time to place the building in satisfactory condition is

shown in the following table:

Electrical Equipment and Facilities	
Morelite Commitment	$ 14,720.00
Mechanical Equipment and Facilities	
Replace defective gages and modify heating plant to comply with Local Law 14	10,000.00
Replace all domestic hot and cold water risers and defective branch lines	145,500.00
Structural Components	
Repair and waterproof exterior masonry	12,900.00
Repair, putty, caulk and paint windows and frames	20,700.00
Repair built-up membrane, title, and cement mortar roofing and flashing	3,900.00
Miscellaneous repairs	1,100.00
Total	$208,820.00

SEE AMENDMENT ON INSIDE COVER.

SCHEDULE B

1050 Park Avenue

Stock Allocations, Prices and Other Information

Apt.	*Rooms, Baths and Electric* (A)	*No. of Shares*	*Purchase Price at $83.05 Per Share*	*Share of Mortgages to Which Building Subject* (B)	*Maintenance Charges at $8.20 per Share* (C) *Annual*	*Monthly*	*Estimated Annual Tax Deduction at $4.05 Per Share*	*Controlled Rent*	*Lease Expiration Date* (D)	*Security Deposit*
2-A	8-3	830	68,931.50	40,047.50	6,806.00	567.16	3,361.50	405.55		
3-A	8-3	845	70,177.25	40,771.25	6,929.00	577.42	3,422.25		3/31/70	
4-A	7-2	650	53,982.50	31,362.50	5,330.00	444.17	2,632.50			550.00
4-A1	1-Kt. (E)	220	18,271.00	10,615.00	1,804.00	150.33	891.00			150.00
5-A	8-3	880	73,084.00	42,460.00	7,216.00	601.33	3,564.00		6/30/68	650.00
6-A	8-3	890	73,914.50	42,942.50	7,298.00	608.16	3,604.50	485.00		
7-A	7-2 (E)	690	57,304.50	33,292.50	5,658.00	471.50	2,794.50			
8-A	8-3 (E)	910	75,575.50	43,907.50	7,462.00	621.83	3,685.50	473.46	6/30/68	
9-A	7-3	790	65,609.50	38,117.50	6,478.00	539.83	3,199.50			
10-A	8-3	930	77,236.50	44,872.50	7,626.00	635.50	3,766.50			
11-A	8-3 (E)	940	78,067.00	45,355.00	7,708.00	642.33	3,807.00			
12-A	8-3	950	78,897.50	45,837.50	7,790.00	649.16	3,847.50	414.64		
13-A	8-3	960	79,728.00	46,320.00	7,872.00	656.00	3,888.00			
14-A	8-3 (E)	970	80,558.50	46,802.50	7,954.00	662.83	3,928.50			800.00

(A) Some of the apartments may have been altered and thus do not conform exactly to the layouts set forth in the typical floor plan.

(B) Tenant-shareholders will have no personal liability for payment of the Apartment Corporation's mortgage indebtedness.

(C) These are estimates for the first full year of cooperative operation and may change in subsequent years due to increased or decreased costs or changes in the amount of real estate taxes and mortgage interest and amortization. In addition to annual maintenance charges, tenant-shareholders will be responsible for the payment of charges for gas and electricity in their apartment, which are separately metered and for the cost of interior repairs and decorating in their apartments.

(D) As described in the Plan (pages 7-8) existing leases will be terminated with respect to those tenants who purchase their apartments under the Plan. In addition, at the time of closing, such tenants will receive a refund of their security deposit.

(E) These apartments have already had installed the wiring and electrical capacities described in this Plan on page 5.

SCHEDULE B

1050 Park Avenue

Stock Allocations, Prices and Other Information

Apt.	*Rooms, Baths and Electric (A)*	*No. of Shares*	*Purchase Price at $83.05 Per Share*	*Share of Mortgages to Which Building Subject (B)*	*Maintenance Charges at $8.20 per Share (C)* *Annual*	*Monthly*	*Estimated Annual Tax Deduction at $4.05 Per Share*	*Controlled Rent*	*Lease Expiration Date (D)*	*Security Deposit*
2-B	2½-1	290	24,984.50	13,992.50	2,378.00	198.16	1,174.50			280.00
2-B1	5-2	Superintendent's Apartment								
3-B	8-3(E)	845	70,177.25	40,771.25	6,929.00	577.42	3,422.25	498.92		498.92
4-B	8-3(E)	870	72,253.50	41,977.50	7,134.00	594.50	3,523.50			650.00
5-B	8-3	880	73,084.00	42,460.00	7,216.00	601.33	3,564.00	376.95		
6-B	8-3(E)	890	73,914.50	42,942.50	7,298.00	608.16	3,604.50			650.00
7-B	7-2	900	74,745.00	43,425.00	7,380.00	615.00	3,645.00		6/30/68	
7-B1	1-1(E)	240	19,932.00	11,580.00	1,968.00	164.00	972.00			135.00
8-B	8-3(E)	910	75,575.50	43,907.50	7,462.00	621.83	3,685.50			
9-B	9-4(E)	1,050	87,202.50	50,662.50	8,610.00	717.50	4,252.50		11/30/71	
10-B	8-3 E)	930	77,236.50	44,872.50	7,626.00	635.50	3,766.50			
11-B	8-3	940	78,067.00	45,355.00	7,708.00	642.33	3,807.00	439.00		
12-B	8-3	950	78,897.50	45,837.50	7,790.00	649.16	3,847.50			
13-B	8-3(E)	960	79,728.00	46,320.00	7,872.00	656.00	3,888.00			
14-B	8-3	970	80,558.50	46,802.50	7,954.00	662.83	3,928.50			
PHB	5-2(E)	710	58,965.50	34,257.50	5,822.00	485.16	2,875.50			500.00

(A) Some of the apartments may have been altered and thus do not conform exactly to the layouts set forth in the typical floor plan.

(B) Tenant-shareholders will have no personal liability for payment of the Apartment Corporation's mortgage indebtedness.

(C) These are estimates for the first full year of cooperative operation and may change in subsequent years due to increased or decreased costs or changes in the amount of real estate taxes and mortgage interest and amortization. In addition to annual maintenance charges, tenant-shareholders will be responsible for the payment of charges for gas and electricity in their apartment, which are separately metered and for the cost of interior repairs and decorating in their apartments.

(D) As described in the Plan (pages 7-8) existing leases will be terminated with respect to those tenants who purchase their apartments under the Plan. In addition, at the time of closing, such tenants will receive a refund of their security deposit.

(E) These apartments have already had installed the wiring and electrical capacities described in this Plan on page 5.

SEE AMENDMENT ON INSIDE COVER.

SEE AMENDMENT ON INSIDE COVER.

SCHEDULE B

1050 Park Avenue

Stock Allocations, Prices and Other Information

Apt.	*Rooms, Baths and Electric* (A)	*No. of Shares*	*Purchase Price at $83.05 Per Share*	*Share of Mortgages to Which Building Subject* (B)	*Maintenance Charges at $8.20 per Share* (C) *Annual*	*Monthly*	*Estimated Annual Tax Deduction at $4.05 Per Share*	*Controlled Rent*	*Lease Expiration Date* (D)	*Security Deposit*
2-C	7-3(E)	710	58,956.50	34,257.50	5,822.00	485.16	2,875.50			550.00
3-C	4½-2(E)	385	31,974.25	18,576.25	3,157.00	263.08	1,559.25		3/31/69	325.00
3-C-1	3½-1(E)	325	26,991.25	15,681.25	2,665.00	222.08	1,316.25		3/14/70	280.00
4-C	7-3	720	59,796.00	34,740.00	5,904.00	492.00	2,916.00	444.30		
5-C	7-3	730	60,626.50	35,222.50	5,986.00	498.83	2,956.50			600.00
6-C	7-3	750	62,287.50	36,187.50	6,150.00	512.50	3,037.50			550.00
7-C	7-3	770	63,948.50	37,152.50	6,314.00	526.16	3,118.50	345.34		
8-C	7-3(E)	790	65,609.50	38,117.50	6,478.00	539.83	3,199.50	550.00		
9-C	7-3	800	66,440.00	38,600.00	6,560.00	546.66	3,240.00			500.00
10-C	7-3	810	67,270.50	39,082.50	6,642.00	553.50	3,280.50			
11-C	7-3(E)	820	68,101.00	39,565.00	6,724.00	560.33	3,321.00	439.99		
12-C	7-3	830	68,931.50	40,047.50	6,806.00	567.16	3,361.50		4/30/70	550.00
13-C	7-3	840	69,762.00	40,530.00	6,888.00	574.00	3,402.00			600.00
14-C	7-3(E)	850	70,592.50	41,012.50	6,970.00	580.83	3,442.50	436.02		
PHC	5-2	600	49,830.00	28,950.00	4,920.00	410.00	2,430.00		5/31/69	

(A) Some of the apartments may have been altered and thus do not conform exactly to the layouts set forth in the typical floor plan.

(B) Tenant-shareholders will have no personal liability for payment of the Apartment Corporation's mortgage indebtedness.

(C) These are estimates for the first full year of cooperative operation and may change in subsequent years due to increased or decreased costs or changes in the amount of real estate taxes and mortgage interest and amortization. In addition to annual maintenance charges, tenant-shareholders will be responsible for the payment of charges for gas and electricity in their apartment, which are separately metered and for the cost of interior repairs and decorating in their apartments.

(D) As described in the Plan (pages 7-8) existing leases will be terminated with respect to those tenants who purchase their apartments under the Plan. In addition, at the time of closing, such tenants will receive a refund of their security deposit.

(E) These apartments have already had installed the wiring and electrical capacities described in this Plan on page 5.

SCHEDULE B

1050 Park Avenue

Stock Allocations, Prices and Other Information

Apt.	*Rooms, Baths and Electric*(A)	*No. of Shares*	*Purchase Price at $83.05 Per Share*	*Share of Mortgages to Which Building Subject*(B)	*Maintenance Charges at $8.20 per Share*(C) *Annual*	*Monthly*	*Estimated Annual Tax Deduction at $4.05 Per Share*	*Controlled Rent*	*Lease Expiration Date*(D)	*Security Deposit*
1-D	6-3	350	29,067.50	16,887.50	2,870.00	239.16	1,417.50	241.25		
2-D	6-3(E)	485	40,279.25	23,401.25	3,977.00	331.41	1,964.25			
3-D	6-3(E)	490	40,694.50	23,642.50	4,018.00	334.83	1,984.50			450.00
4-D	6-3(E)	495	41,109.75	23,883.75	4,059.00	338.25	2,004.75			450.00
5-D	6-3	500	41,535.00	24,125.00	4,100.00	341.66	2,025.00			
6-D	6-3(E)	515	42,770.75	24,848.75	4,223.00	351.91	2,085.75	366.00		369.65
7-D	6-3	525	43,601.25	25,331.25	4,305.00	358.75	2,126.25			400.00
8-D	6-3	540	44,847.00	26,055.00	4,428.00	369.00	2,187.00			
9-D	6-3	550	45,677.50	26,537.50	4,510.00	375.83	2,227.50			400.00
10-D	6-3	560	46,508.00	27,020.00	4,592.00	382.66	2,268.00			
11-D	6-3	570	47,338.50	27,502.50	4,674.00	389.50	2,308.50			
12-D	6-3(E)	580	48,169.00	27,985.00	4,756.00	396.33	2,349.00	388.75		
13-D	6-3	590	48,999.50	28,467.50	4,838.00	403.16	2,389.50	316.65		
14-D	6-3	600	49,830.00	28,950.00	4,920.00	410.00	2,430.00	376.61		
PHD	5-1(Terr)	530	44,016.50	25,572.50	4,346.00	362.16	2,146.50			

(A) Some of the apartments may have been altered and thus do not conform exactly to the layouts set forth in the typical floor plan.

(B) Tenant-shareholders will have no personal liability for payment of the Apartment Corporation's mortgage indebtedness.

(C) These are estimates for the first full year of cooperative operation and may change in subsequent years due to increased or decreased costs or changes in the amount of real estate taxes and mortgage interest and amortization. In addition to annual maintenance charges, tenant-shareholders will be responsible for the payment of charges for gas and electricity in their apartment, which are separately metered and for the cost of interior repairs and decorating in their apartments.

(D) As described in the Plan (pages 7-8) existing leases will be terminated with respect to those tenants who purchase their apartments under the Plan. In addition, at the time of closing, such tenants will receive a refund of their security deposit.

(E) These apartments have already had installed the wiring and electrical capacities described in this Plan on page 5.

SEE AMENDMENT ON INSIDE COVER.

Exhibit C, Amended Plan of Cooperative Organization:

RECAPITULATION OF SCHEDULE B

	Total Shares	*Total Price*	*Share of Mortgages*	*Total Annual Maintenance*	*Annual Deduction*
A-line	11,455	$ 951,337.75	$ 552,703.75	$ 93,931.00	$ 46,392.75
B-line	12,335	$1,024,421.75	595,163.75	101,147.00	49,956.75
C-line	10,730	891,126.50	517,722.50	87,986.00	43,456.50
D-line	7,880	654,434.00	380,210.00	64,616.00	31,914.00
Totals	42,400	$3,521,320.00	$2,045,800.00	$347,680.00	$171,720.00

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE C

1050 PARK AVENUE

Estimated Expenses for First Year of Cooperative Operation

SEE AMENDMENT ON INSIDE COVER.

OPERATING EXPENSES:			
Labor:			
Wages (19 men)	$97,140		
Social Security & State Un. Ins.	9,500		
Union Welfare Fund	3,300		
Union Pension Fund	3,000	$112,940.00	
Fuel		6,800.00	
Electricity and Gas		3,600.00	
Water and Sewer Rent		4,200.00	
Repairs, painting, supplies and miscellaneous		13,000.00	
Insurance		6,000.00	
Management		9,000.00	
Legal and auditing		1,500.00	$157,040.00
TAXES:			
Real Estate—$1,440,000 at .0511		$ 73,584.00	
Franchise		800.00	74,384.00
MORTGAGE SERVICING CHARGES:			
Refinanced first mortgage, Greenwich Savings Bank			
interest	$65,500.02		
amortization	22,499.98	$ 88,000.00	
Reconsolidated second mortgage			
—to Morrill: past due interest	$12,000.00		
current interest	22,428.64		
—to Campbell: current interest	15,000.00	49,428.64	137,428.64
Reserve for contingencies			3,327.36
TOTAL ESTIMATED EXPENSES			$372,180.00
Less: Professional Income			24,500.00
INDICATED MAINTENANCE REQUIREMENT			$347,680.00

TOTAL NUMBER OF SHARES	42,400
MAINTENANCE PER SHARE	$8.20

Exhibit C, Amended Plan of Cooperative Organization.

GREEN AND WEISS
Accountants and Auditors
55 West 42nd Street
New York, N. Y. 10036

May 1, 1968

Messrs.: Peter Jakobson
John R. Jakobson
Arthur D. Emil
Lawrence A. Kobrin

Re: Premises 1050 Park Avenue

Gentlemen:

Pursuant to your request, we have previously audited the books and records relating to the operation of the building at 1050 Park Avenue for the period February 1, 1963 to December 31, 1967. As a result thereof, we submit the attached comparative statement of operating expenses for the premises, excluding depreciation and mortgage interest for the eleven month period from February 1, 1963 to December 31, 1963 and for the calendar years ending December 31, 1964, 1965, 1966 and 1967.

Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and supporting data deemed necessary under the circumstances.

In our opinion, the accompanying statement of operating expenses, excluding depreciation and mortgage interest, presents fairly the operating costs of the building for the period February 1, 1963 to December 31, 1967.

Respectfully submitted,

GREEN & WEISS

By Sigmund Weiss
Certified Public Accountant

Exhibit C, Amended Plan of Cooperative Organization.

PREMISES 1050 PARK AVENUE

Comparative Statement of Operating Expenses
February 1, 1963 to December 31, 1966

	Feb. 1, 1963 To Dec. 31, 1963	Jan. 1, 1964 To Dec. 31, 1964	Jan. 1, 1965 To Dec. 31, 1965	Jan. 1, 1966 To Dec. 31, 1966	Jan. 1, 1967 To Dec. 31, 1967
OPERATING EXPENSES:					
Real Estate Taxes	63,656.48	56,960.00	55,311.25	61,748.75	66,703.80
Water & Sewer Charges	2,074.00	2,074.00	2,044.00	2,827.53	4,088.00
Payroll	70,717.51	82,292.05	90,163.61	88,761.63	92,655.55
Fuel & Oil	6,150.31	6,582.39	7,032.03	6,632.84	6,276.02
Insurance	3,128.50	8,057.45	5,901.14	4,831.88	7,132.31
Repairs & Maintenance..	7,073.68	4,898.86	13,354.66	8,650.18	10,817.75
Maintenance Contracts ..	2,888.50	2,362.00	2,071.80	....	....
Painting & Decorating ..	6,921.50	10,026.50	33,358.94	14,934.11	7,337.05
Uniforms & Laundry ...	1,152.86	1,488.27	2,540.83	2,634.31	3,626.94
Advertising	138.88	791.31	1,767.26	256.14	201.90
Electric	2,919.20	3,472.29	4,820.97	3,927.29	5,319.92
Office & Telephone	877.28	468.94	597.74	605.28	1,626.53
Professional Fees	1,925.00	1,200.00	2,519.33	1,360.00	1,357.00
Payroll Taxes	5,490.99	5,886.67	6,710.04	6,895.10	6,133.34
Building Supplies	1,796.45	2,915.63	7,730.58	2,524.92	3,306.36
Union, Welfare & Pension	4,096.33	5,571.00	5,689.32	5,564.97	6,686.52
Management Fees	....	....	....	6,664.00	9,996.00
Sundry	324.75	237.00	358.50	917.98	650.02
TOTAL OPERATING EXPENSES	181,332.22	195,284.36	241,972.00	219,736.91	233,915.01

NOTE: The above does not reflect provision for depreciation and mortgage interest. In addition, the amount shown for calendar year 1967 for painting and decorating does not include a nonrecurring painting expense due to water damage in the amount of $6,348.50.

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE D

Rent Controlled Apartments

2A	4C
6A	7C
8A	8C
12A	11C
	14C
3B	
5B	1D
11B	6D
	12D
	14D

NOTE: All of the apartments listed above would become decontrolled under the present provisions of local Law of March 26, 1964 (Schedule E) when they are vacated by their present tenants in occupancy except for Apartments 1D and 6D. Apartment 6D will become decontrolled when it is vacated and Apartment 12A will become decontrolled on October 1, 1970 under the Regulations Amendment (Schedule F). Certain other Apartments may become decontrolled under the Regulations Amendment, but no representation can be made in connection with such possible decontrol or the effective date thereof.

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE E

LAW DECONTROLLING CERTAIN HOUSING ACCOMMODATIONS

(Adopted by City Council February 18, 1964—Signed by Mayor March 26, 1964)

PORTION OF A LOCAL LAW

To amend the administrative code of the city of New York, in relation to exempting from the provisions of the rent control law those housing accommodations having a maximum rent of $250 or more per month, as of April 1, 1960.

Be it enacted by the Council as follows:

§ 2. Subparagraph (i) of paragraph 2 of subdivision e of section Y51-3.0 of such code, such subparagraph having been added by local law twenty of the city of New York for the year nineteen hundred sixty-two, is hereby amended by adding thereto, a new item, to be item (7), to read as follows:

(7) (i) Individual housing accommodations having unfurnished maximum rents of two hundred and fifty dollars or more per month as of April first, nineteen hundred sixty, or furnished maximum rents of three hundred dollars or more per month as of April first, nineteen hundred sixty, which are or become vacant on or after the effective date of this item (7); or

(ii) On and after October first, nineteen hundred sixty-four individual housing accommodations having unfurnished maximum rents of three hundred dollars or more per month as of April first, nineteen hundred sixty, or furnished maximum rents of three hundred and sixty dollars or more per month as of April first, nineteen hundred sixty; provided, however, that where any such housing accommodation is occupied by a tenant whose household contains one or more children attending an elementary or secondary school, such housing accommodation shall continue to remain subject to control under this title and the regulations thereunder until June thirtieth, nineteen hundred sixty-five; and provided further, that where such housing accommodation on the effective date of this item (7) is occupied by a tenant whose household contains four or more related persons, it shall continue to remain subject to control under this title and the regulations thereunder so long as such tenant remains in occupancy; or

(iii) On and after April first, nineteen hundred sixty-five individual housing accommodations having unfurnished maximum rents of two hundred and fifty dollars to two hundred ninety-nine dollars and ninety-nine cents, inclusive, per month as of April first, nineteen hundred sixty, or furnished maximum rents of three hundred dollars to three hundred fifty-nine dollars and ninety-nine cents inclusive, per month as of April first, nineteen hundred sixty; provided, however, that where any such housing accommodation is occupied by a tenant whose household contains one or more children attending an elementary or secondary school, such housing accommodation shall continue to remain subject to control under this title and the regulations thereunder until June thirtieth, nineteen hundred sixty-five; and provided further, that where such housing accommodations on the effective date of this item (7) is occupied by a tenant whose household contains four or more related persons, it shall continue to remain subject to control under this title and the regulations thereunder so long as such tenant remains in occupancy.

(iv) The exemptions provided for in this item (7) shall remain effective only so long as the housing accommodations are not occupied for other than single family occupancy.

(v) The term "related persons", as used in this item (7), shall be limited to the tenant and a parent, grandparent, child, stepchild, grandchild, brother or sister of the tenant or of the tenant's spouse or the spouse of any of the foregoing, who customarily occupied the housing accommodation on and before the effective date of this item (7). The tenant's spouse or an unmarried child or grandchild of the tenant who temporarily resided elsewhere on the effective date of this item (7) because of attendance at an educational institution or service in the armed forces of the United States shall be deemed to be a related person in occupancy.

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE F

Amendment No. 24 to Rent, Eviction and Rehabilitation Regulations, Effective March 1, 1968, Decontrolling Certain Housing Accommodations

The Rent, Eviction and Rehabilitation Regulations are hereby amended as follows:

Section 2 is hereby amended by adding thereto a new subparagraph to paragraph f, to be subparagraph (15), to read as follows:

(15)(a) Individual housing accommodations having unfurnished maximum rents of $250 or more per month as of April 1, 1965, or furnished maximum rents of $300 or more per month as of April 1, 1965, which are or become vacant after January 29, 1968 by voluntary surrender of possession or in the manner provided by Part V of these Regulations; or

(b) On and after October 1, 1968 individual housing accommodations consisting of less than three rooms having unfurnished maximum rents of $250 or more per month as of April 1, 1965, or furnished maximum rents of $300 or more per month as of April 1, 1965; or

(c) On and after October 1, 1968 individual housing accommodations consisting of at least three rooms and less than four rooms having unfurnished maximum rents of $250 or more per month as of April 1, 1965, or furnished maximum rents of $300 or more per month as of April 1, 1965, provided that such housing accommodation shall continue to remain subject to control until it becomes vacant as provided in item (a) of subparagraph (15) herein where it was occupied on January 29, 1968 by a tenant whose household then consisted of four or more related persons, as such term is herein defined (a single parent or a single head of the household being deemed to be two persons for the purpose of this provision when residing with one or more dependent children); and provided further, that such housing accommodation shall also continue to remain subject to control where occupied by less than four related persons on January 29, 1968 until October 1, 1969 at the maximum rent in effect on September 30, 1968 unless a written lease has been executed, or the landlord has offered such lease to the tenant by certified mail prior to June 1, 1968 or between September 1, 1968 and September 15, 1968, both dates inclusive, which lease: (1) shall be for a term of at least one

year commencing October 1, 1968, or commencing from the date of expiration of any existing lease expiring on or after October 1, 1968; (2) may provide for a monthly rent not exceeding 10 percentum above the maximum rent in effect on the date of its execution; (3) shall contain a certification by the landlord that he will continue to maintain all essential services furnished or required by the Rent Law to be furnished on the date of execution of the lease during the lease term; and (4) shall give the tenant an option to cancel the lease by giving the landlord at least 30 days' written notice by certified mail prior to the date when such cancellation shall take effect; or

(d) On and after October 1, 1968 individual housing accommodations consisting of four or more rooms having unfurnished maximum rents of $250 or more per month as of April 1, 1965, or furnished maximum rents of $300 or more per month as of April 1, 1965, provided that such housing accommodation shall continue to remain subject to control until it becomes vacant as provided in item (a) of subparagraph (15) herein where it was occupied on January 29, 1968 by a tenant whose household then consisted of four or more related persons, as such term is herein defined (a single parent or a single head of the household being deemed to be two persons for the purpose of this subparagraph when residing with one or more dependent children); and provided, further, that such housing accommodation shall also continue to remain subject to control where occupied by less than four related persons on January 29, 1968 until October 1, 1970 at the maximum rent in effect on September 30, 1968 unless a written lease has been executed, or the landlord has offered such lease to the tenant by certified mail prior to June 1, 1968 or between September 1, 1968 and September 15, 1968, both dates inclusive: which lease (1) shall be for a term of at least two years commencing October 1, 1968, or from the date of expiration of any existing lease expiring on or after October 1, 1968; (2) may provide for a monthly rental not exceeding 10 per cent above the maximum rent in effect on the date of its execution during the first year of its term, and for an additional 10 per cent above the rent payable during the first year, for the second year of its term; (3) shall contain a certification by the landlord that he will continue to maintain all essential services furnished or required by the Rent Law to be furnished on the date of execution of the lease during the lease term; and (4) shall give the tenant an option to cancel the lease by giving the landlord at least 30 days' written notice by certified mail prior to the date when such cancellation shall take effect.

(e) The exemption provided for in this subparagraph (15) shall not apply to entire structures rented by means of an underlying lease, and shall remain effective only so long as the housing accommodations are not occupied for other than single family occupancy.

(f) The term "related person," as used in this subparagraph (15), shall be limited to the tenant and a parent, grandparent, child, stepchild, grandchild, brother, sister of the tenant or the tenant's spouse, or the spouse of any of the foregoing who customarily occupied the housing accommodation on January 29, 1968, except that a child of the tenant born or legally adopted on or before July 1, 1968 shall be deemed to have been in occupancy on January 29, 1968 and that an unmarried child or grandchild of the tenant or the tenant's spouse who temporarily resided elsewhere on January 29, 1968 because of attendance at an educational institution or service in the Armed Forces or the Peace Corps of the United States shall be deemed to be a related person in occupancy for the purpose of this subparagraph.

(g) For the purpose of this subparagraph, the term "maximum rent" shall not include any conditional rent increase applicable solely to a tenant in occupancy.

(h) In computing the number of rooms contained in a housing accommodation such computation shall not include bathrooms, foyers and windowless rooms and shall be limited to living rooms, kitchens (other than an enclosed kitchenette or an area in the living-room which is either recessed or semi-enclosed), dining rooms (other than dinettes or dining-alcoves) and bedrooms.

(i) Notwithstanding any provision of this subparagraph to the contrary, where the total number of related persons in occupancy shall become less than four by means other than the demise of any such related person and results from the permanent moving of any related person other than the tenant or his or her spouse, the landlord may make application after the effective date of this subparagraph, and not more than once in any succeeding year, for an order decontrolling such housing accommodations on the basis of such change in occupancy. In the event that such application shall be granted, the Administrator shall prescribe the effective date of decontrol which shall contain conditions consistent with those imposed in this subparagraph under similar circumstances.

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE G

Purchase Agreement

THE UNDERSIGNED (called herein the "Purchaser") has received and read the Amended Plan of Cooperative Organization dated May 10, 1968 together with the schedules and exhibits thereto (called herein the "Plan") relating to the premises at 1050 Park Avenue, New York, New York (called herein the "Property").

The undersigned Purchaser desires to obtain a proprietary lease for apartment (called herein the "Apartment") in the Property and is purchasing shares allotted to said Apartment of the capital stock of 1050 Tenants Corp. (called herein the "Apartment Corporation").

In consideration of the foregoing, the Purchaser agrees with the Apartment Corporation and with Pease & Elliman, Inc. (the "Selling Agent") as follows:

1. The Purchaser agrees to purchase from the Apartment Corporation shares of its capital stock, fully paid and non-assessable, of $1.00 par value for a total purchase price of $, by checks drawn to the order of The Bank of New York (the "Escrow Agent") as follows:

(a) 10% of the aforesaid amount by check subject to collection upon the execution of this agreement;

Check here if appropriate: ( ) Please apply the deposit previously made to the purchase under this agreement.

(b) The balance of said amount by certified or bank check on not less than ten days' written notice from the Selling Agent that the Plan has been declared effective.

2. If the Plan shall become effective and Purchaser has paid the full purchase price hereunder, then on and after the Closing Date the Purchaser shall be entitled to receive a proprietary lease from the Apartment Corporation for the Apartment, as well as a certificate for the shares of stock of the Apartment Corporation as hereinbefore provided. The term of the proprietary lease shall commence on the Closing Date and Purchaser's obligations for rent shall commence on said Closing Date.

3. In the event that the Plan is declared abandoned for any reason or is not declared effective within the time provided therein, then the Escrow Agent shall return to the Purchaser, without interest, all sums paid hereunder and upon such refund, this agreement shall be deemed terminated and cancelled and neither party hereto shall have any claim against the other.

4. All payments made hereunder shall be deposited by the Selling Agent with the Escrow Agent as provided in the Plan to be held and disbursed as therein described.

5. The time for payment of the balance of the purchase price is of the essence of this agreement. In the event that Purchaser shall fail to make any payment required, then the Apartment Corporation may, after giving five days' written notice, at its option, cancel this agreement and receive from the Escrow Agent those sums previously deposited under this purchase agreement to be retained as liquidated damages and thereafter, all of the parties shall have no further liability or obligation hereunder, provided said default is not cured within the aforesaid five days. The Apartment Corporation or the Selling Agent may sell the shares and proprietary lease to any other person as if this agreement had never been executed. Said right of cancellation, however, shall be in addition to all other rights and remedies which the Selling Agent, the Sponsor, or the Apartment Corporation may have against the Purchaser.

6. This agreement shall not be binding upon the Apartment Corporation or on the Sponsor until a duplicate copy approved and executed by the Apartment Corporation and by the Sponsor has been delivered to the Purchaser. If such copy has not been delivered to the Purchaser within thirty days from the time the agreement executed by the Purchaser is deposited with the Selling Agent, then this agreement shall not be binding and the sum paid shall be returned upon demand to the Purchaser without interest.

7. Notices given hereunder shall be in writing and sent by certified or registered mail, return receipt requested, as follows: to the Sponsor, c/o Emil & Kobrin, Esqs., 32 East 57 Street, New York, New York 10022; to the Selling Agent, 60 East 56 Street, New York, New York 10022; to the Purchaser, at the address given below; to the

Apartment Corporation, c/o Karelsen Karelsen Lawrence & Nathan, Esqs., 230 Park Avenue, New York, N. Y. 10017.

8. The Purchaser acknowledges that the Sponsor and the Selling Agent have offered full and free opportunity to investigate and examine all of the documents and facts to which reference is made in the Plan and that no representations or warranties have been made to the Purchaser except as specifically set forth in the Plan and that no person has been authorized to make any representations or warranties not specifically set forth in the Plan.

9. The Purchaser represents and warrants to the Sponsor, the Apartment Corporation and the Selling Agent that Purchaser has not negotiated or had any dealings with any broker other than

The Purchaser also warrants and represents that Purchaser is over the age of 21 years.

10. The shares and proprietary lease of the Apartment sold hereunder are subject [insert information relating to lease or statutory tenancy]

Any lease agreement or tenancy pursuant to which the Purchaser occupies the Apartment on the Closing Date shall be terminated and of no further effect after the date of the commencement of the proprietary lease. All rights of the Purchaser hereunder are specifically subject and subordinate to the mortgage liens described under "Mortgage Indebtedness" in the Plan.

11. This agreement contains the entire understanding and agreement of the parties and may not be amended or changed in any way except by a written instrument signed by all of the parties hereto.

12. The Purchaser shall not assign this agreement without the prior written consent of the Apartment Corporation and of the Sponsor.

Exhibit C, Amended Plan of Cooperative Organization.

Subject to the provisions hereof, this agreement shall bind and apply to the parties hereto, their heirs, personal representatives, successors and assigns.

Dated:

.....
Purchaser

.....
Address

APPROVED:

PEASE & ELLIMAN, INC., Selling Agent

By .....

Dated:

1050 TENANTS CORP., Apartment Corporation

By .....

Dated:

ACCEPTED:

SPONSOR

By .....
Authorized Agent

Dated:

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE H

Escrow Agreement

September 6, 1967

The Bank of New York
360 Park Avenue
New York, New York 10022

Re: 1050 Park Avenue

Gentlemen:

1. This constitutes the Escrow Agreement attached as an Exhibit to the Plan of Cooperative Organization (hereinafter called the "Plan") under which 1050 Tenants Corp. (hereinafter called the "Apartment Corporation") proposes to sell shares of its capital stock and to issue proprietary leases for the apartments in the building known as 1050 Park Avenue, New York, New York. In the Plan and hereinafter, Peter Jakobson, John R. Jakobson, Arthur D. Emil and Lawrence A. Kobrin are collectively called the "Sponsor," Pease & Elliman, Inc. is called the "Selling Agent," and Karelsen, Karelsen, Lawrence & Nathan, Esqs., are called the attorneys for the Apartment Corporation.

2. All payments made by purchasers under the purchase agreements shall be made payable directly to you or shall be endorsed to your order by the Selling Agent, to be deposited in an account with you under the title "1050 Park Avenue—Purchase Account". Each payment deposited with you by the Selling Agent shall be identified as to the purchaser and/or apartment, but you shall have no obligation to inquire into the correctness of any amount or such description. You are authorized to accept and hold on deposit all such funds deposited with you by the Selling Agent.

3. The funds received by you and held on deposit shall be disbursed by you in the following manner:

(a) Upon receipt by you of written notice from either the Sponsor or the Selling Agent that the Plan has been abandoned, or in the event that no instructions or directions are furnished by September 30, 1968, you shall draw and deliver to the Selling Agent your checks to the order of the individual purchasers identified by the Selling Agent and in the amounts deposited by such individual purchasers for all funds then on hand. Upon the delivery of those checks to the Selling Agent, you shall have no further obligations hereunder.

(b) Upon receipt by you of written notice from either the Sponsor or the Selling Agent at any time that a purchase agreement has been cancelled, you shall draw and deliver to the Selling Agent your check to the order of the purchaser previously identified and in the amount deposited by such purchaser. Upon delivery of such check to the Selling Agent, you shall have no further obligations with respect to said purchaser or his purchase agreement.

(c) Upon receipt by you of a written notice from either the Sponsor or the Selling Agent at any time that a purchaser has defaulted under his purchase agreement, you shall pay to the Sponsor the amount then on deposit with you with respect to said purchaser and his purchase agreement, and shall have no further obligations with respect thereto.

(d) Upon receipt by you of written notice from both the Sponsor and the Selling Agent that the Plan will become effective on a specified date, you shall disburse all funds then held in the account established hereunder pursuant to the written direction of Karelsen, Karelsen, Lawrence & Nathan, Esqs., attorneys for the Apartment Corporation.

4. All funds received and held by you hereunder and all payments made hereunder shall be without interest and you shall have no obligation whatsoever to invest the funds or place them in an interest-bearing account.

5. You will be liable only for funds received by you which are not disbursed pursuant to the provisions of this Escrow Agreement. In making payments of disbursements you shall rely upon notices, certifi-

cations, directions and instructions of the Selling Agent or the Sponsor or Karelsen, Karelsen, Lawrence & Nathan, Esqs., as the case may require as hereinbefore provided, and you shall not be required to assume any liability as to the genuineness, propriety or legal sufficiency of any such instrument. (Notices, certifications, etc., by the Sponsor may be evidenced over the signature of Arthur D. Emil whom the Sponsor hereby authorizes to act upon their behalf.) Upon the making of payments pursuant to such instruments you shall be free and harmless from all claims, disputes or defenses by the Selling Agent, the Sponsor (individually and collectively) or by any purchaser. The Sponsor (jointly and severally) agree to hold you harmless from any liability or expense that you may incur by virtue of any such claims, disputes or defenses. If any such claim is asserted against you, the Sponsor will engage counsel, satisfactory to you to defend you, without cost or expense to you against such claim, and in the event any claimant is successful in establishing his claim, the Sponsor will hold you harmless and make all payments required to be made by you pursuant to any judgment that may be entered in any court. You shall have no other duties or obligations except for those specifically set forth in this Escrow Agreement and no modification of the arrangements set forth herein or in the Plan or of the purchase agreement thereunder or any other instruments relating to the Plan shall be binding upon you unless accepted by you in writing. You may consult with your own counsel and shall be fully protected in respect to any action taken or omitted by you in good faith on the advice of such counsel.

6. You shall make no charge for your services to be rendered as escrow agent hereunder.

7. Any notices sent by you shall be addressed as follows: if sent to the Sponsor, care of Emil & Kobrin, Esqs., 32 East 57 Street, New York, New York 10022; if sent to the Apartment Corporation, care of Karelsen, Karelsen, Lawrence & Nathan, Esqs., 230 Park Avenue, New York, New York 10017; if sent to the Selling Agent, 60 East 56 Street, New York, New York, 10017, attention: Mr. Armand Lindenbaum.

Exhibit C, Amended Plan of Cooperative Organization.

Would you be good enough to signify your acceptance of the arrangements outlined herein by countersigning and returning a duplicate original of this letter.

Very truly yours,

1050 TENANTS CORP.,
Apartment Corporation

By s/ MILDRED SUSSMAN
.....
President

SPONSOR:

s/ PETER JAKOBSON
.....
PETER JAKOBSON

s/ JOHN R. JAKOBSON
.....
JOHN R. JAKOBSON

s/ ARTHUR D. EMIL
.....
ARTHUR D. EMIL

s/ LAWRENCE A. KOBRIN
.....
LAWRENCE A. KOBRIN

APPROVED:

PEASE & ELLIMAN, INC., Selling Agent

By s/ARMAND LINDENBAUM
.....
Executive Vice President

ACCEPTED:

THE BANK OF NEW YORK, Escrow Agent

By s/ JOSEPH A. HANNAN, JR.
.....
Executive Vice President

Exhibit C, Amended Plan of Cooperative Organization.

SCHEDULE I

Service Management Contracts

Apartment Building Agreement between Realty Advisory Board on Labor Relations, Inc. and Local 32B, Building Service Employees International Union, AFL-CIO, effective April 21, 1967.

Contract with Active Exterminating Co., Inc. dated November 26, 1962 on monthly basis for exterminating services.

Contract with Bell Television, Inc. dated April 17, 1959.

Contract with Coinmach Industries Corp., dated August 1, 1966 for coin metered laundry equipment, expires August 1, 1969.

Contract with Royal Elevator Co., Inc. dated March 18, 1965, on monthly basis for elevator maintenance service.

Contract with Teleprompter Manhattan CATV Corp., dated July 31, 1967.

Contracts (2) with Water Service Laboratories, Inc. dated May 2, 1966.

Commitment and agreement with Morelite Electrical Service, Inc., dated August 30, 1967.

Affidavit of Herbert Saltzman, in Opposition to Motion to Dismiss.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

HERBERT SALTZMAN, being duly sworn, deposes and says:

I am one of the plaintiffs herein. I am suing to redress a fraud committed in the sale of stock to me and others by defendants. Defendants' motion to dismiss the complaint for lack of subject matter jurisdiction on the ground that the stock sold to me is not a security within the federal securities acts is without merit and should be denied for the following reasons:

1. *The definition of "security" in the federal securities laws specifically includes both "stock" and "any interest or investment commonly known as a security"*—it is undisputed that defendants sold to plaintiffs "stock" in a corporation; the corporation was organized pursuant to the New York Business Corporation Law and defendants filed the prospectus thereof with the Department of Law pursuant to section 352-e of the General Business Law (which section deals with sale of "securities")—in short, what plaintiffs bought was both stock and an interest commonly known and treated by defendants themselves as a security.

2. *The Securities Exchange Commission ("SEC") has, itself, interpreted stock in cooperative housing corporations to be a "security"*—SEC regulations specifically exempt such securities from reporting, but not from the anti-fraud provisions of the Securities Act of 1933 and Securities Exchange Act of 1934.

Affidavit of Herbert Saltzman.

3. *Strong public policy reasons support the exercise of federal jurisdiction over stock in corporations owning housing cooperatives,* at least insofar as the anti-fraud provisions of the federal securities acts are concerned.

The Action in Brief

This is an action under the anti-fraud provisions of both the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as the New York Martin Act and common law, alleging violation of those laws in connection with the issuance and sale to plaintiffs of shares of stock of 1050 Tenants Corp. ("1050 Corp.").

Defendants were the promoters and organizers of the 1050 Corp. and drew and issued the prospectus (Exhibit "C" to defendants' moving papers), pursuant to which the shares in 1050 Corp. were issued and then sold to the public.

Plaintiffs purchased stock in 1050 Corp., in reliance on representations made in the prospectus (and otherwise in connection with the sale of stock) regarding the quality of the building which is the primary asset of the corporation and the cost of maintenance and taxes with regard thereto. The details of these misrepresentations are set forth in paragraphs 22 and 23 of the complaint, a copy of which defendants have attached to their moving papers as Exhibit "A".

Under the cooperative plan, defendants, who organized and controlled 1050 Corp. prior to the sales to us, received the bulk of the cash consideration paid by plaintiffs for the stock. Thus, by means of their misrepresentations and omissions, defendants were able to induce us to pay too high a price for the stock and to induce 1050 Corp. to retain for its own use (e.g., maintenance, etc. of the building) too low a portion of the consideration paid. Defendants then walked away with an excessive profit leaving us with overvalued stock subject to assessments for the extra undisclosed expenditures and repairs required as a result of defendants' omissions and misrepresentations.

Affidavit of Herbert Saltzman.

Plaintiffs did not know the full, true facts when defendants sold us our stock. Defendants did know or could have easily learned the full facts and knowingly failed to disclose them to us. Had the *facts* been disclosed to us, we could and would have insisted on an appropriate reduction and reallocation of the consideration paid for our shares of stock.

Thus, this lawsuit and the recovery we seek (repayment of the excessive consideration improperly obtained by defendants) states the same traditional action under the anti-fraud sections of the federal securities action that a purchaser of shares of a corporation listed on the New York Stock Exchange might assert if similarly defrauded.

The Motion in Brief

The sole question presented on this motion is whether the shares of stock in 1050 Corp. which plaintiffs purchased are "securities" within the meaning of the federal securities laws.

This issue must be resolved in the affirmative for the following reasons:

1. *"Stock" is a "security".*

As set forth in the accompanying memorandum of law, the definition of "security" in the federal securities laws expressly includes both "stock" and "any interest or investment commonly known as a security".

It is undisputed that what plaintiffs purchased from defendants was "stock". Indeed, a stock certificate in substantially the same form as any other business corporation's stock certificate was delivered to us upon the closing. 1050 Corp. was organized pursuant to Section 402 of the New York Business Corporation Law (see defendants' Exhibit "C," at p. 10), and just like any other business corporation issued stock as evidence of ownership of interests in it by the shareholders.

Thus, the prospectus provides that the corporation was to have an authorized capital of 45,000 shares at $1.00 par value, each of which would be entitled to one vote, just like the stock of any other business corporation. Similarly, the prospectus provides that the Corporation will have by-laws and directors and stock certificates. In short, 1050 Corp. is organized in precisely the same way as any other New York business corporation whose stock is considered a "security" for purposes of the federal securities acts.

While it is true that most of the shareholders of 1050 Corp. are also residents of 1050 Park Avenue, the prospectus specifically reserves 2,600 shares of the authorized shares as not allocated to apartments. The prospectus also provided that the Sponsors (i.e., the defendants) could retain stock if all of the apartments in the building were not reserved to purchasers of stock. (See p. 10 of defendants' Exhibit "C".)

The Prospectus was issued purportedly pursuant to Section 352-e of the New York General Business Law, which provides for registration of prospectuses regarding *securities* issued in connection with the sale of stock in corporations dealing in real estate, and which specifically includes stock of cooperative corporations as a *"security"* covered thereby.

In short, it is clear that what defendants at bar sold to plaintiffs was either "stock" or "interests or investments commonly known as securities" or both, and thus a "security" within the meaning of the federal securities acts.

2. *The view of the SEC.*

As also shown in our accompanying memorandum, the Securities and Exchange Commission has specifically interpreted the federal securities acts' definition of "security" as including shares in cooperative housing corporations.

Similarly, the States of New York, California, Florida and Illinois—whose major metropolises probably contain more cooperatives than any other state—have specifically included such stock within the definition of "security" for purposes of their securities acts.

Surely, these interpretations of "security" by the ageney specifically created by Congress to administer and enforee the federal securities acts and by the four states whieh deal most frequently with cooperative corporations is entitled to great weight. As a minimum, these interpretations support the conclusion that stock in cooperative corporations is an "interest . . . commonly known as a security."

3. *The public policy factor.*

Strong public policy reasons support the conclusion that our stock is and should be deemed a security: on the basis of the plain language of the federal securities aets themselves, the corporate form utilized by defendants at bar and the views and practices of the SEC and state agencies.

The view of the commentators is virtually unanimous that more effective regulation of offerings of shares in cooperative eorporations is necessary. Existing controls simply have not succeeded in insuring fair and full disclosure of the financial facts pertinent to an investor's purehase in such stock.

As is outlined in the most recent of the numerous law artieles written on the subject:

> "There has been a growth in abuses by developers and promoters. Some of these abuses have been rather extreme". Note, "Cooperative Housing Corporations and the Federal Securities Laws", 71 Colum. L. Rev. 118, 120 (1971).

The author continued (at pp. 120-21) to outline among the abuses: (1) retention of unconscionable profit by the

promoters; (2) presubscription self-dealing; (3) underestimation of costs which the tenant-shareholder will incur; (4) understatement of the actual cost of physical maintenance; and (5) non-disclosure of such matters as possible increases in real estate tax assessments and the details of the sponsors' maintenance estimates included in their prospectus—these are, exactly the same types of wrongs complained about at bar. (See ¶¶ 22 and 23 of Complaint, a copy of which is attached as Exhibit "A" to defendants' moving papers.)

Thus, the commentator calls (at pp. 123, 124) for a judicial construction that the anti-fraud provisions of the federal securities acts apply to securities:

> "[T]he disclosure provisions of the [federal] securities laws seem particularly well suited for curbing the abuses to which these sales are subject;" and
>
> "The enforcement apparatus and civil liability provisions presently included in the [federal] securities law offer perhaps their greatest advantage as a means of curbing the abuses to which sales of cooperative shares are subject."

Federal redress has become ever-more appropriate and necessary as promoters have increased their interstate solicitation and use of the mails to sell stock in cooperatives and condominiums in Florida and in "multi-state" cities such as New York and Chicago. Thus, numerous other commentators, also cited in our accompanying memorandum, wisely call for the same result as that suggested in the above—quoted 1971 Columbia Law Review article.

The Fallacies In Defendants' Argument

As just noted, defendants' argument flies squarely in the face of the plain language of the federal securities acts themselves, authoritative SEC and State interpretation

and the view of the commentators—each of these reasons in and of itself justifies, indeed compels, denial of this motion to dismiss.

However, even under their own analysis, defendants are wrong.

Defendants' argument is simply this: stock in a cooperative corporation is *not* an "investment contract"; "investment contracts" *are* securities; hence, stock in a cooperative corporation is *not* a "security".

The most basic and obvious fallacy with this strained syllogism is that the definition of "security" includes many things (indeed more than 15) in addition to "investment contracts." But, in addition, we respectfully submit that our stock in 1050 Corp. should be deemed to constitute an "investment contract" for purposes of the federal securities acts—as the commentator in 71 Columbia Law Review specifically concludes.

Defendants say an "investment contract" has three characteristics: (1) common scheme; (2) reliance on others; and (3) profit-motive.

Defendants do not dispute that the first of these requirements is met. Although they offer some weak opposition regarding the second requirement, it seems clear that it too is met, since it was the defendants who formed the cooperative corporation and framed the basic guidelines for its operations, including the selection of and contracting with a third party, Pease & Elliman, to manage the building owned by the corporation. At the time that plaintiffs purchased our stock in the corporation, the defendants had already contracted on behalf of the corporation for the building to be managed by their own selling agent, Pease & Elliman.

The third criterion is the only element which in the past has given some pause to the commentators. Yet this—the profit-motive—is also clearly met at bar. First, I and other shareholders did have, among our reasons for buying into

the cooperative an investment motive. The value of our shares of stock has every likelihood of appreciating, promising a potentially large capital gain to us upon resale. Second, ownership in the cooperative corporation affords us with numerous other economic benefits which are as meaningful to us as the purchase of other traditional forms of investments: the tax deductions we obtain are as valuable to our financial picture as dividends we may receive on stock in any listed or other public corporation. Finally, cooperative corporations themselves often have earnings (for example, from rentals of professional offices, vending machines and laundry facilities), the benefit of which is made directly available to the shareholders on a pro rata basis. Thus, in the prospectus for 1050 Corp., it is noted that we were to receive estimated "professional income" projected at $24,500 per year which would go to reduce pro rata the maintenance charges attributable to each of the shares in the corporation (See Exhibit "C" at p. 3, and on Schedule C at p. 43).

I am advised by counsel that, as is indicated in our accompanying memorandum, the so-called profit-motive may not even still be required by the Court for something to be an investment contract. But even if it is, the foregoing clearly should state enough of an economic motive to satisfy that element of the test.

Thus, even under defendant's own tortured and artificially confined analysis, the shares of stock here at issue are "securities".

Conclusion

Plaintiffs' stock in 1050 Corp. is a security within the meaning of the federal securities acts. The motion by defendants to dismiss the complaint for lack of subject matter jurisdiction should, therefore, be denied.

(Sworn to by Herbert Saltzman, September 15, 1972.)

Reply Affidavit of Lawrence A. Kobrin, in Support of Defendants' Motion to Dismiss.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

LAWRENCE A. KOBRIN, being duly sworn, deposes and says:

I am a member of the Bar of this Court and a defendant herein. I make this Affidavit to correct certain distortions contained in plaintiffs' papers in opposition to defendants' motion to dismiss.

In seeking to characterize the sale of real estate here involved as a "securities" transaction, plaintiffs seek to create the misleading impression that plaintiff 1050 Tenants Corporation ("the Corporation") is an ordinary business corporation and that it is only by the sheerest coincidence that the shareholders in this venture happen to live in the same building.

Thus the Saltzman Affidavit (p. 5) alludes to the fact that the Corporation "just like any other business corporation" issued stock certificates "in substantially the same form as any other business corporation's stock certificates."

The most cursory review of the stock certificate issued by the Corporation (a copy of which is annexed hereto as Exhibit A*) shows that this is simply not true. The stock

* The copy provided is a draft of said certificate, the provisions of which are identical to the final printed version.

certificate, on its face, specifically provides that it is subject to all of the conditions and provisions of the proprietary lease, which lease limits and restricts the title and rights of any transferee, that the shares are transferrable only as an entirety and only to an approved assignee of the proprietary lessee, and that the Corporation has a first lien on the shares for amounts due under the proprietary lease. Moreover, the Plan of Cooperative Organization (Exh. C to the Emil Affidavit) provides (p. 13) that upon a tenant-owner's default, "the shares held by a proprietary lessee will be deemed cancelled and possession of the Apartment must be surrendered to the Apartment Corporation."

All of these restrictions are clearly consistent with an analysis of the shares as representing solely a vehicle for acquisition of an apartment, and not the kind of business investment normally represented by securities or stock.

The Saltzman Affidavit (pp. 5-6) also refers to the facts that 2600 of the Corporation's shares were not allocated to apartments and that defendants had the right to retain stock if all the apartments were not sold. The inference that future investment transactions in this unallocated or retained stock were possible is nonsense. The purpose of the 2600 shares was to reserve them for the possibility that the tenant-owners would decide to convert doctors' offices to residential ownership. And what, in fact, the defendants had a right to retain for resale were apartments, not securities.

The object of the tenant-owners in this transaction was not the acquisition of stock, but of the right to occupy a permanent private residence. That right is evidenced by the Proprietary Lease (Exhibit B hereto) issued to each purchaser at the closing. The Lease imposes numerous restrictions which are at total variance with any type of "securities" transaction. Thus the Lease contains a complicated formula by which annual "cash requirements" are

determined (pp. 1-3), restrictions on the use of the space for any purpose other than a private dwelling (¶ 13), restrictions on subletting (¶ 14), restrictions on assignment (¶ 16), restrictions on separate ownership of the lease and shares (¶¶ 34(a) & 40). These provisions confirm the integral relationship between the shares and the Lease and make clear that the purpose of the transaction was the acquisition of residences and that use of the corporate form was purely an incidental vehicle for the achievement of that purpose.

It is respectfully submitted that even a cursory examination of the ownership and title documents, submitted herewith, confirms the plain fact that no "securities" requiring the application of the federal securities laws were here involved.

(Sworn to by Lawrence A. Kobrin, September 22, 1972.)

Exhibit A, Stock Certificate.

(See opposite ☞)

NUMBER

SHARES

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

1050 TENANTS [illegible] CORP.

[illegible]

of the par value of One ($1.00) Dollar

THIS IS TO CERTIFY that _____

1050 Tenants

is the owner of _____ fully paid and non-assessable, transferable on the books of this Corporation in person or by attorney upon surrender of this Certificate properly endorsed. 1050 Tenants

The rights of any holder hereof are subject to all the terms, covenants, conditions and provisions of a certain proprietary lease made between the person in whose name this certificate is issued, as lessee, and [illegible] Realty Corp., as Lessor, for an apartment in the premises known as [illegible] Central Park [illegible], New York City, N. Y., which lease limits and restricts the title and rights of any transferee hereof. The shares represented by this certificate are transferable only as an entirety and only to an approved assignee of such proprietary lease. A copy of the proprietary lease is on file and available for inspection at the office of [illegible] Corp., New-York City, N. Y. 1050 Tenants Copies and the by-laws are

By-laws

Pursuant to the provisions of Section [illegible] of the Stock Corporation Law, the directors of this corporation may refuse to consent to the transfer of the shares represented by this certificate until any indebtedness of the holder to the corporation is paid. The corporation, by the terms of said proprietary lease, has a first lien on the shares represented by this certificate for all sums due and to become due under said proprietary lease. by-laws and

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this _____ day of _____ A. D. 19____

Secretary
Asst. Secretary

Treasurer
Asst. Treasurer

President
Vice-President

Exhibit B, Proprietary Lease.

Premises: 1050 Park Avenue
New York, New York
Apartment:

Proprietary Lease

1050 TENANTS CORP.,

Lessor

—with—

Lessee

Exhibit B, Proprietary Lease.

1050 TENANTS CORP.

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Exhibit B, Proprietary Lease.

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Exhibit B, Proprietary Lease.

PROPRIETARY LEASE

AGREEMENT made , 19 between 1050 TENANTS CORP., a New York Corporation, having an office at 60 East 56th Street, New York, N. Y. (hereinafter called the Lessor) and

presently residing at (hereinafter called the Lessee).

WITNESSETH:

WHEREAS the Lessor is the owner of the land and building at 1050 Park Avenue, Borough of Manhattan, New York City (hereinafter called the Building); and

WHEREAS the Lessor consistent with a plan to provide cooperative ownership of apartments in the Building proposes to lease or has leased the apartments in said Building to the several owners of its shares by instruments substantially identical with this, known as proprietary leases; and

Shares and Apartment

WHEREAS the Lessee is the owner of shares of the Lessor which have been allocated to apartment (hereinafter called the apartment) and are appurtenant to this lease,

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and agreements herein, the Lessor hereby leases to the Lessee, subject to the terms and conditions hereof, and the Lessee hires from the Lessor the apartment for a term from until the 30th day of September, 2006 (unless the term shall sooner expire or be extended as hereinafter provided) at a rent for each year, or portion of year, during said term equal to that proportion of the Lessor's cash requirements, as hereinafter defined, which the number of shares specified in the recitals of this lease bears to the total number of shares of the Lessor issued and outstanding on the date of the determination of such cash requirements, together with the additional

Term

Rent

rent hereinafter provided. Such rent shall be payable monthly in advance or in such installments and at such times as shall be determined by the Lessor's Board of Directors (hereinafter sometimes referred to as "the Board") and the additional rent shall be payable on the dates fixed herein.

Cash Requirements

For the purpose of fixing and determining such cash requirements and rental, the rental year shall be deemed to be the calendar year. The cash requirements above referred to for each year are hereby defined as such aggregate sum as the Board of Directors from time to time shall determine is to be derived from lessees under the proprietary leases then in force and otherwise (after deducting any estimated commercial rents or other income to be received during such year, which rents or other income shall be derived from persons other than proprietary lessees entitled to occupy space in the Building) on account of the estimated expenses and outlays of the Lessor to the close of such year, growing out of or connected with the ownership, maintenance and operation of such land and Building. This sum may include taxes, assessments, water rates, insurance premiums, operating expenses, alterations, replacements and repairs, expenses and liabilities incurred by the Lessor under or pursuant to this or other leases, interest on mortgage indebtedness, curtailment of mortgage indebtedness, the payment of any other liens or charges, the payment of any deficit remaining from a previous period, the creation of a reasonable reserve or surplus fund and expenses for other corporate purposes. The Board of Directors may include in the cash requirements for the year (of which a share to be fixed as aforesaid shall be payable by the Lessee as rent for such year) any liabilities or items of expense which accrued or became payable in a previous year, or which might have been included in the cash requirements of a previous year, but were not included therein, and also any sums which the Board of Directors may deem it necessary or prudent to provide as a reserve against liabilities or items of expense then accrued or thereafter to accrue although not payable in that year.

For the purpose of this lease, any sum collected from proprietary lessees (other than a special assessment for capital improvements) shall be deemed gross income unless the Board of Directors otherwise specifies.

All such determinations of the Board of Directors shall be made by resolution adopted at a regular or special meeting held in accordance with the By-Laws.

Failure to Fix Cash Requirements

The omission of the Board to determine the Lessor's cash requirements for any year or portion thereof shall not be deemed a waiver or modification in any respect of the covenants and provisions hereof, or a release of the Lessee from the obligation to pay the rent or any installment thereof, but the rent last fixed for any year or portion thereof shall thereafter continue to be the rent until a new rent shall be fixed.

Board of Directors Fixes Cash Requirements

The power and authority to determine and establish the amount of the Lessor's cash requirements and of the rents of the lessees, and to require payment of such rents, shall be possessed only by the Board of Directors elected by its shareholders, and shall not pass to or be exercised by:

(a) any creditor, receiver or trustee of the Lessor or any representative of any such creditor, receiver or trustee;

(b) any board of directors elected by such creditor, receiver or trustee or by any representative of any such creditor, receiver or trustee.

Every such determination by the Board of Directors, made in good faith, and within the bounds of this agreement, shall be final and conclusive as to all lessees, and any expenditures made by the Lessor's officers or managing agent, under the direction or with the approval of the Lessor's Board of Directors, within the bounds of this agreement of lease, shall, as against the Lessee, be deemed necessarily and properly made for such purposes.

Cooperation

1: The Lessor and Lessee shall always in good faith endeavor to observe and promote the co-operative purposes for the accomplishment of which the Lessor was incorporated.

Repairs by Lessor

2: The Lessor shall keep in good repair the foundations, sidewalks, walls (except interior walls of apartments, unless repairs thereto are necessitated by the failure of the Lessor to make repairs for which it is by this paragraph responsible), supports, beams, roofs, terraces (subject to the provisions of paragraph 8 hereof), gutters,

fences, cellars, chimneys, laundry and storage space, entrances and street and court doorways, public halls, public stairways, windows, fire escapes, elevators, pumps and tanks, and all pipes for carrying water, gas or steam and the drain pipes and electrical conduits, together with all plumbing, heating and other apparatus except those portions of any of the foregoing which it is the duty of the Lessee to maintain and keep in good repair as hereinafter provided. The Lessee shall in accordance with paragraphs 27 and 32 hereof give the Lessor prompt notice of any accident or defect known to the Lessee and requiring repairs to be made. All repairs required to be made by the Lessor shall be made at its expense, provided that if such repairs shall have been rendered necessary by the act, neglect or carelessness of the Lessee or any of the family, guests, employees or subtenants of the Lessee, the Lessor shall be entitled to reimbursement from the Lessee for all expenses incurred in connection therewith, whether or not paid by the Lessor, and such reimbursements shall be due as additional rent on the first day of the calendar month following demand therefor by the Lessor on the Lessee.

Maintenance

3: The Lessor shall, in the manner determined by the Board of Directors, maintain and manage the Building as a residential apartment Building, keep the elevators and the public halls, cellars and stairways clean and properly lighted and heated, provide the number of attendants requisite for the proper care and service of the Building, and provide the apartment with a proper and sufficient supply of hot and cold water and of heat. The Board shall have complete discretion to determine from time to time what services and what attendants shall be proper and the manner of maintaining and operating the Building, and also what services shall be increased, reduced, changed, modified, added or eliminated.

Damage to Building

4: If the apartment or the means of access thereto, or the Building shall be damaged by or as a result of a fire or by other cause insured against by the Lessor, repairs shall be made by the Lessor with reasonable dispatch after notice of the damage, due allowance to be made for any delay arising in connection with adjustment of insurance loss or labor troubles, and there shall be no abatement of rent, unless the Lessor shall then be insured under a policy of rental value insurance.

Exhibit B, Proprietary Lease.

If the Building be destroyed or if it be so damaged that it cannot be repaired, in the opinion of the Board of Directors, within a reasonable time after the loss shall have been adjusted by the insurance carrier, or if the damage shall be caused by conditions not insured against by the Lessor and the Board of Directors shall decide not to repair the damage, then on notice provided for in paragraph 34 hereof, this lease and all other leases and all rights and obligations of the parties thereto and the tenancies thereby created shall cease and expire and rent shall be paid to the date of such destruction or damage.

Books of Account and Reports

5: The Lessor shall keep full and correct books of account at its principal office or at such other place as the Board of Directors may from time to time determine, and the same shall be open during all reasonable hours to inspection by the Lessee or his representatives. Within three months after the end of each fiscal year, the Lessor shall furnish to the Lessee an annual report of operations and balance sheet of the Lessor, certified by an independent certified public accountant. Within three months after the end of each calendar year, the Lessor shall furnish to the lessees a statement by the certified public accountant of the Lessor of any deductions available for income tax purposes on a per share basis and indicating thereon, on a per share basis, such information as may be necessary or useful to the Lessee in the preparation of his income tax returns.

Issuance of Additional Shares and Proprietary Leases Shall Not Affect the Liability of the Lessee

6: If the Lessor shall hereafter issue shares (whether now or hereafter authorized) in addition to that issued on the execution of this lease, and execute additional leases appurtenant thereto, the rent payable by the Lessee hereunder, until the Board of Directors shall modify or make a new determination of the Lessor's cash requirements, shall not thereby be affected; the rent payable under leases of all rooms or apartments to which such additional shares are appurtenant shall, for the period from the commencement of the term of each such additional lease to the date of the next determination of cash requirements by the Board of Directors, be fixed by the Board of Directors and shall be stated in such new lease at an amount not less than the rent payable for such apartments or rooms immediately prior thereto.

Regrouping of Space in the Building

The Board of Directors of the Lessor, upon the written request of the lessee or lessees of one or more apartments in the Build-

ing, and owner or owners of the shares issued to accompany the same, may in its discretion, at any time, permit such lessee or lessees, at his or their own expense—A: (1) to subdivide any apartment into any desired number of apartments, (2) to combine all or any portions of any such apartments into one or any desired number of apartments; and (3) to reallocate the shares issued to accompany the proprietary lease or leases, but the total number of the shares so reallocated shall not be less than the number of shares previously allocated to the apartment or apartments involved, and, in connection with any such regrouping, the Board of Directors may require that the number of shares allocated to the resulting apartment or apartments be greater than the number of shares allocated to the original apartment or apartments, and may authorize the issuance of shares from its treasury for such purpose; or B: to incorporate one or more servant's rooms or other space in the Building not covered by any proprietary lease, into one or more apartments covered by a proprietary lease, whether in connection with any regrouping of space pursuant to this paragraph or otherwise, and in allocating shares to any such resulting apartment or apartments, shall determine the number of shares from its treasury to be issued and allocated in connection with the appropriation of such additional space.

In respect of apartments leased to the Sponsor named in the Plan of Cooperative Organization or the Sponsor's Nominee or the Sponsor's Assignee (who while entitled to occupy any such apartments for his personal use and occupancy does not do so), such Sponsor or his Nominee or such Assignee may, upon the written consent of the Managing Agent of the Building only, change the number of such apartments by increasing or decreasing their size, or change the size, layout or location of any such apartment, or reallot the shares allocated to any such apartments, but no reallotment shall result in a change in the total number of shares previously allocated to the apartments involved.

The provisions of this lease concerning alterations shall apply with respect to work done under these provisions concerning regrouping of space.

Upon any regrouping of space in the Building, the proprietary leases so affected, and the accompanying share certificates shall be

surrendered, and there shall be executed and delivered in place thereof, respectively, a new proprietary lease for each separate apartment involved, and a new certificate for the number of shares so reallocated to each new proprietary lease.

Changes in Terms and Conditions of Proprietary Leases

7: All proprietary leases of apartments in the Building heretofore executed or hereafter executed shall be in the form of this lease, except with respect to the statement as to the number of shares owned by the Lessee, the use of the premises and the date of the commencement of the term. The Lessor shall not make or consent to any change or alteration in the terms or conditions of any proprietary lease which shall have been or which shall be executed by the Lessor (as distinct from house rules) unless such change or alteration is approved, in writing, or by affirmative vote taken at a meeting called for such purpose, by lessees owning at least two-thirds in amount of the Lessor's shares issued and outstanding.

Penthouses and Terraces

8: If this lease embraces a penthouse or portion thereof, the Lessee shall have and enjoy the exclusive use of the terrace appurtenant thereto, subject to the applicable provisions of this lease and to the use of such terrace by the Lessor to enable it to fulfill its obligations hereunder. The Lessee shall not, however, in the use of the terrace, endanger the safety of any person or property and his use of the terrace shall be subject to such rules, with respect thereto, as may from time to time be prescribed by the Board of Directors. The Lessor for itself or other lessees shall have the right to erect on the roof above a penthouse, radio or television aerials and antennas or other equipment which may extend over such terrace but at a height which will not unreasonably interfere with the use thereof, and the Lessor shall have the right of access thereto for such installations and for the maintenance and repair thereof. The Lessee shall keep the terrace or portion thereof appurtenant to his apartment clean and free from snow, ice, leaves and other debris and shall maintain all drains therein in good condition. Provided the Lessee has fulfilled his obligations hereunder, the maintenance and repair of tiles and brickwork on private terraces shall be the responsibility of the Lessor.

Assignment of Lessor's Rights

9: In the event that as of the date of the commencement of this lease, any third party shall be in possession or have a right to pos-

session of the apartment pursuant to any lease, rental agreement or as a statutory tenant or otherwise, then the Lessor does hereby assign to the Lessee any and all of the Lessor's rights therein or against said third party, including the right to collect rent, pursuant to any such lease, rental agreement or statutory tenancy or other arrangement and the Lessee by the execution hereof does assume all of the Lessor's obligations to such third party from and after the date of the commencement of the lease term. The Lessor agrees to co-operate with the Lessee, but at the Lessee's expense, in enforcement of the Lessee's rights against such third party.

Cancellation of Prior Agreements

10: In the event that as of the date of the commencement of this lease, the Lessee has the right to possession of the premises under any lease, rental agreement or statutory tenancy, then this lease shall supersede such prior lease, rental agreement or statutory tenancy and such prior lease, rental agreement or statutory tenancy shall be null and void and of no force and effect after the date of commencement of this lease, except for claims theretofore arising thereunder.

Quiet Enjoyment

11: The Lessee, upon paying the rent and performing the covenants and complying with the conditions on the part of the Lessee to be performed, as herein set forth, shall, at all times during the term hereby granted, quietly have, hold and enjoy the apartment without any suit, trouble or hindrance from the Lessor, subject, however, to the rights of present tenants or occupants of the apartment.

Payment of Rent

12: The Lessee will pay the rent and additional rent to the Lessor, or its managing agent, upon the terms, at the time and in the manner herein provided, without any deduction on account of any setoff or claim which the Lessee may have against the Lessor.

Use of Premises

13: The Lessee shall not occupy or use the apartment, or permit the same or any part thereof to be occupied or used, for any purpose other than as a private dwelling apartment for the Lessee and the family of the Lessee except that apartments leased for purposes other than and in addition to dwelling purposes may also be used for such purposes, provided that the Lessor's Board of Directors shall have specifically authorized and approved such additional or alternative

use in writing, and provided further that such additional alternative use shall not be in violation of any zoning regulation or other applicable law, ordinance, rule or regulation.

Subletting

14: The Lessee shall not sublet the whole or any part of the apartment for any term to any person or persons without the Lessor's written consent authorized by a resolution of a majority of its Board of Directors or consent by a majority of the Directors or by lessees owning of record at least a majority of the shares of the Lessor then issued and outstanding. If the Lessee is the Sponsor named in the Plan of Cooperative Organization or a nominee of the Sponsor or assignee of the Sponsor (who while entitled to occupy any such apartments for his personal use does not do so), then only the consent of the managing agent of the Building shall be required, but such consent shall be given only where the sublessee is a reputable person of good financial standing.

Whenever the Lessee applies to the Lessor or to the managing agent, as the case may be, for a consent to a subletting, the Lessee shall deliver a copy of the sublease to which consent is requested, which sublease shall contain a covenant by the sublessee that (1) if the term of the sublease extends beyond the date of the expiration of the term of the within lease and the within lease is not extended; or (2) if the Lessor shall resume possession of the apartment by special proceeding or ejectment or other means, or by any termination of this lease, pursuant to a notice given, as provided in this lease; or (3) if the Lessee shall exercise the option to cancel this lease on a date prior to the expiration of the term of such sublease; then in any of such events such sublease shall terminate automatically upon the date of termination or expiration of this lease, and the sublessee shall forthwith surrender possession of the premises to the Lessor, or, at the option of the Lessor, the sublessee will execute an agreement with the Lessor whereby, in consideration of the Lessor's agreeing to permit such sublessee to remain in possession of the apartment until the end of the term of such sublease, the sublessee will attorn to the Lessor and will pay to the Lessor the rent reserved in such sublease from and after the date of the expiration or termination of this proprietary lease, or, if this proprietary lease be terminated under the provisions of this lease, then from and after the date of such termina-

tion to the expiration of the term of the sublease, and during such period will perform all the terms and conditions of such sublease.

Collection of Rent from Subtenants

15: If the Lessee shall at any time sublet the apartment, with or without the Lessor's consent, and shall default in the payment of any rent or additional rent, the Lessor may, at its option, so long as such default shall continue, demand and receive the rent due or becoming due from such subtenant to the Lessee, up to an amount sufficient to pay all sums due from the Lessee to the Lessor, and any such payment of such subrent to the Lessor shall be sufficient payment and discharge of such subtenant's obligations to the Lessee, to the extent of the amount so paid.

Assignment

16: The Lessee shall not assign this lease or transfer the shares appurtenant thereto or any interest therein, and no such assignment or transfer shall take effect as against the Lessor for any purpose, until—

(a) An instrument of assignment executed and acknowledged by the assignor shall have been delivered to the Lessor;

(b) An agreement by the assignee assuming and agreeing to perform and comply with all the covenants and conditions of this lease to be performed or complied with by the Lessee on and after the effective date of said assignment shall have been executed and acknowledged by the assignee and delivered to the Lessor, but no such assumption agreement shall be required if the assignee surrenders the assigned lease and enters into a new lease for the remainder of the term, as hereinafter provided;

(c) All shares of the Lessor appurtenant to this lease shall have been transferred to the assignee, with proper transfer stamps affixed;

(d) All sums due from the Lessee shall have been paid to the Lessor, together with a sum to be fixed by the Board of Directors of the Lessor to cover reasonable legal and other expenses of the Lessor in connection with such assignment and transfer of shares; and

(e) Except in the case of an assignment, transfer or bequest of the lease and appurtenant shares to the Lessee's spouse, consent

to such assignment shall have been duly authorized by resolution of the Board of Directors, or given in writing by a majority of the then authorized number of Directors or, if the Directors shall have refused such consent, then by lessees owning of record at least a majority of the shares of the Lessor then issued and outstanding.

Assignment by Sponsor

If the Lessee is the Sponsor named in the Plan of Cooperative Organization or a nominee of the Sponsor or Assignee of the Sponsor (who while entitled to occupy any such apartment for his personal use does not do so), then consent to an assignment or transfer of the lease and the shares appurtenant thereto will be required only from the then managing agent of the Building, who shall consent to such assignment or transfer only when the assignee or transferee is a reputable person of good financial standing.

Release of Lessee Upon Assignment

Whenever the Lessee shall, under the provisions of this lease, be permitted to assign and shall so assign the same, and the assignee shall assume all of the unfulfilled obligations of the assignor hereunder, either by an instrument in writing delivered to the Lessor or by surrendering the assigned lease and entering into a new lease for the remainder of the term, the assignor shall have no further liability on any of the covenants of this lease to be thereafter performed. At the option and election of the Lessor any assigned lease shall be cancelled, and a new lease for the remainder of the term of this lease, in the same form, shall in such case be entered into between the Lessor and the assignee.

Regardless of any prior consent theretofore given, neither the Lessee nor his executor, administrator or personal representative, nor any trustee or receiver of the property of the Lessee, nor anyone to whom the interest of the Lessee shall pass by law, shall be entitled to assign this lease, to sublet or to occupy the apartment, or any part thereof, except upon compliance with the requirements of this lease. The character of and restriction on the occupancy of the apartment, and on subletting or assignment of this lease, as hereinbefore expressed, restricted and limited, are an especial consideration and inducement for the granting of this lease by the Lessor to the Lessee.

Electric Service

17: So long as electric current is furnished by a public service corporation directly to the Lessee, the Lessee will pay for all electric

current consumed in the apartment. If the Lessor shall contract for the furnishing of electric current to the Building by a public service corporation, the Lessee will purchase from the Lessor all electric current that the Lessee shall require and will pay the Lessor for the amount consumed as shall be indicated by the meter furnished therefor. The rates for said current payable by the Lessee shall be the same as those charged by said public service corporation for a consumption similar to that of the Lessee and the Lessee shall comply with rules and regulations similar to those prescribed by said public service corporation. Payments for such electric current shall be due monthly as and when bills therefor are rendered and if at any time such payments are in default, they shall be deemed to be additional rent due and payable on the first day of the next following month after such bills are rendered or at the option of the Lessor on the first day of any succeeding month.

Alterations and Additions

18: The Lessee shall not, without first obtaining the written consent of the Lessor, make in the apartment, or on any terrace appurtenant thereto, any structural alteration or any alteration of the water, gas or steam pipes, electrical conduits or plumbing, nor install any electrical equipment, including but not limited to air-conditioning units, electric ranges, refrigerators, washing machines, dryers, heating panels or other equipment which shall impose a greater load on existing electric or water supplies nor, except as hereinafter authorized, remove any additions, improvements or fixtures from the apartment or terrace. The performance of work pursuant to such consent shall be in acccordance with any applicable rules and regulations of the Board of Directors. Without limiting the generality of the foregoing, such rules and regulations may include limits on the days or hours when work may be done, provision for written waiver of his lien by any contractor, subcontractor, materialman or laborer performing any work, and provision for the utilization of materials of a standard commensurate with those used elsewhere in the Building even though such standard exceeds any minimum building standard set by the City of New York or any other authority having jurisdiction.

If, in the Lessor's sole judgment, any or all of the Lessee's electrical equipment or appliances result in poor quality of service,

interruption of service, overloading or damage to the facilities for the supplying of electricity to the Building, the Lessee shall forthwith remedy the condition. The Lessor or the Lessor's duly authorized representatives shall have the right of access to the apartment to make any changes thereto deemed necessary by the Lessor, and the Lessor may withhold or discontinue electric service until the Lessee remedies the condition of which the Lessor shall complain.

Interior Repairs

19: The Lessee shall decorate and keep the interior of the apartment in good repair, and the Lessor shall not be held answerable for any repairs in or to the same. The Lessee shall not permit or suffer anything to be done or kept in the apartment or on his terrace, if any, which will increase the rate of fire insurance on the Building or the contents thereof, or which will interfere with the rights of other lessees or annoy such lessees by unreasonable noises or otherwise, or which will obstruct the public halls or stairways of the Building. The Lessee will comply with all the requirements of the Board of Health and other governmental authorities and with all laws, ordinances, rules and regulations with respect to the occupancy or use of the apartment; and if, by reason of the occupancy or use of the apartment or terrace by the Lessee, the rate of fire insurance on the Building or its contents shall be increased, the Lessee shall become personally liable for the additional insurance premiums incurred by either Lessor or any lessee or lessees of other apartments in the Building on all policies covering the Building or any apartment therein, and the Lessor shall have the right to collect the same for its benefit or the benefit of any such lessees as additional rent, on the first day of the calendar month following written demand therefor by the Lessor. In addition to decorating and keeping the interior of the apartment in good repair, the Lessee shall be responsible for the maintenance or replacement of any plumbing fixtures, lighting fixtures, air conditioning units, refrigerators or ranges and other similar equipment that may be in the apartment and the wiring and conduits in the apartment or on the terrace.

Removal of Fixtures Installed by Lessee

20: If the Lessee, or any prior proprietary lessee, shall have heretofore placed or shall hereafter place in the apartment any special additions, improvements or fixtures, such as mantels, lighting fixtures, refrigerators, ranges, air conditioning equipment, woodwork, panel-

ing, ceilings, doors or decorations, then the Lessee shall have the right, prior to the termination of this lease, to remove the same at the Lessee's own expense, provided: (i) that the Lessee at the time of such removal shall not be in default in the payment of rent or in the performance of any other provision or condition of this lease; (ii) that prior to any such removal, the Lessee shall give written notice thereof to the Lessor; (iii) that the Lessee shall pay the cost of any such removal and shall repair any damage resulting therefrom; and (iv) that the Lessee shall replace and re-install at the Lessee's own expense any equipment that was in the apartment at the beginning of the term or, at the Lessee's option, shall put the apartment in tenantable condition by installing standard equipment of a kind and quality customary in buildings of this type and satisfactory to the Lessor.

Removal of Prior Installed Fixtures

21: If the Lessee shall have heretofore, at the Lessee's own expense, placed in the apartment any such additions, improvements or fixtures, which the Lessee has the right to remove under the provisions of any lease in effect immediately prior to the commencement of the term of this proprietary lease, the Lessee shall have the right to remove the same upon observing and complying with the provisions of this proprietary lease relating to the removal of additions, improvements and fixtures hereafter placed in the apartment and the repair of damage resulting from such removal.

Lease Subordinate to Mortgage

22: This lease is and shall be subject and subordinate to any mortgages now a lien upon the land and Building and to any and all extensions, modifications, renewals and replacements thereof and this lease shall be subject and subordinate to the lien of any other mortgage or mortgages which shall at any time be placed on the land and Building. The Lessee shall at any time, and from time to time, on demand, execute any instruments that may be required by any mortgagee, or by the Lessor, for the purpose of more formally subjecting this lease to the lien of any such mortgage or mortgages, and the duly elected officers, for the time being, of the Lessor are and each of them is hereby irrevocably appointed the attorney-in-fact and agent of the Lessee to execute the same upon such demand, and the Lessee hereby ratifies any such instrument hereafter executed by virtue of the power of attorney hereby given.

Mechanics' Liens

23: In case there shall be filed a notice of Mechanic's Lien against the Building, for, or purporting to be for, labor or material alleged to have been furnished or delivered at the Building or the apartment to or for the Lessee, or anyone claiming under the Lessee, the Lessee shall forthwith cause such lien to be discharged by payment, bonding or otherwise; and if the Lessee shall fail to cause such lien to be discharged within twenty days after notice from the Lessor, then the Lessor may cause such lien to be discharged by payment, bonding or otherwise, without investigation as to the validity thereof or of any offsets or defenses thereto, and shall have the right, upon demand, to collect, as additional rent, all amounts so paid and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees and disbursements, together with interest thereon from the time or times of payment.

Lessor's Right of Entry

24: The Lessor and its agents shall be permitted to visit and examine the apartment and terrace at any reasonable hour of the day, and workmen may enter the same at any time, when authorized by the Lessor or the Lessor's agents, to make or facilitate repairs in any part of the Building and to remove such portions of the walls, floors and ceilings of the apartment as may be required for the purpose of making such repairs but the Lessor shall at its own cost and expense thereafter restore the premises to proper condition. If the Lessee shall not be personally present to permit entry into the apartment, at any time when an entry shall be necessary or permissible hereunder, the Lessor or the Lessor's agents may forcibly enter the apartment without rendering the Lessor or such agent liable to any claim or cause of action for damages by reason thereof (if during such entry the Lessor shall accord reasonable care to the Lessee's property), and without in any manner affecting the obligations and covenants of this lease; and the right and authority hereby reserved do not impose, nor does the Lessor assume by reason thereof, any responsibility or liability whatsoever for the care or supervision of the apartment, or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected, except as may be herein specifically provided.

Lessor's Right to Repair at Lessee's Expense

25: If the Lessee shall fail to make repairs to any part of the apartment or appurtenances as herein required, or shall fail to comply with any other covenant or condition of this lease on his part to be

performed, or if the Lessee shall (expressly or by implication) request the Lessor, its agents or servants to perform any act not hereby required to be performed by the Lessor, the Lessor may after 10 days notice to the Lessee, make such repairs, comply with such covenant or condition or perform such act or arrange for others to do the same, without liability of the Lessor; and, in such event, the Lessor, its agents, servants, and contractors shall, as between the Lessor and Lessee, be conclusively deemed to be acting as agents of the Lessee and all contracts therefor made by the Lessor shall be so construed whether or not made in the name of the Lessee. However, at its sole election, Lessor may pay for the foregoing and collect such payments upon demand, as additional rent.

Lessee's Indemnity of Lessor

The Lessee agrees to save the Lessor harmless from all liability, loss, damage and expense arising from injury to person or property occasioned by the failure of the Lessee to comply with any provision hereof, or due wholly or in part to any act, default or omission of the Lessee or of any person dwelling or visiting in the apartment, or by the Lessor, its agents, servants and contractors when acting as agent for the Lessee as in this lease provided.

Waivers

26: The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the covenants or conditions hereof, or to exercise any right or option herein contained, or to serve any notice, or to institute any action or proceeding, shall not be construed as a waiver of such default or a relinquishment for the future of the right to enforce such covenant or exercise such option or right thereafter but such covenant or option or right shall continue and remain in full force and effect. The receipt by the Lessor of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Lessor of any provision hereof shall be deemed to have been made unless in writing and signed by an officer of the Lessor pursuant to authority contained in a resolution of its Board of Directors. The collection of rent from an unauthorized assignee, subtenant or occupant shall not be deemed a consent to such assignment, subletting or occupancy, or evidence of any attornment by such assignee, subtenant or occupant to the Lessor but shall be deemed to constitute a payment by the Lessee's agent on account of the Lessee's obligations to the Lessor. If consent to an as-

signment or subletting is given, no further assignment or subletting shall be made without express consent, as hereinabove provided, in each instance.

Notices

27: Any notice by the Lessor to the Lessee shall be deemed to be duly given, and any demand by the Lessor on the Lessee shall be deemed to have been duly made, only if in writing and delivered personally or sent by registered mail addressed to the Lessee at the demised premises, or such other address as may be designated in writing by the Lessee. Any notice by the Lessee to the Lessor shall be deemed to be duly given, and any demand by the Lessee on the Lessor shall be deemed to have been duly made, only if in writing and sent by registered or certified mail to the Lessor, c/o Pease & Elliman, Inc. at 60 East 56th Street, New York, N. Y. 10022, or such other address as may be designated in writing by the Lessor.

Reimbursement of Lessor's Expenses

28: If the Lessee shall at any time be in default hereunder and the Lessor shall incur any expense (whether paid or not) in performing acts which the Lessee is required to perform, or in instituting any action or proceeding based on such default, the expense thereof to the Lessor, including reasonable attorneys' fees and disbursements, shall be paid by the Lessee to the Lessor, on demand, as additional rent.

Lessor's Immunities

29: The Lessor shall not be liable for any failure or insufficiency of heat, water supply, electric current, gas, telephone or elevator service or other service to be supplied by the Lessor hereunder, or for interference with light, air, view or other interests of the Lessee, or for injury or damage to person or property caused by the elements or by another tenant or person in the Building or resulting from steam, gas, electricity, water, rain or snow which may leak or flow from outside or from any part of the Building or from any of its pipes, drains, conduits, radiators, boilers, tanks, appliances or equipment, or from any other place, unless caused by or due to the negligence of the Lessor. No abatement of rent or other compensation or claim of eviction shall be made or allowed because of the making or failure to make, or delay in making any repairs, alterations or decorations to the Building, or any fixtures or appurtenances therein, or for space taken to comply with any law, ordinance or governmental regulation, or for interruption or curtailment of any service agreed to be furnished by the Lessor,

due to accidents, alterations or repairs, or to difficulty or delay in securing supplies or labor. Neither the Lessor nor any of its directors, officers or agents shall be required to explain to any Lessee or any other person the reasons for its determination in any matter before it.

Storage Room, Laundry

30: Unless otherwise provided by written agreement, if the Lessor shall furnish to the Lessee any storage space, the use of laundry, or any other facility outside the apartment, the same shall be deemed to have been furnished gratuitously by the Lessor under a revocable license. Lessor shall not be required to furnish such space to any Lessee whether or not such space is available. The Lessee shall not use such space for the storage of valuable or perishable property or of property which when so stored violates any rule or regulation of any fire department or other government agency. The Lessee shall, at its own expense, adequately protect himself and the Lessor by insurance against damage, theft, loss or fire. If washing machines or other equipment are made available to the Lessee, the Lessee shall use the same on condition that the Lessor is not responsible for such equipment, nor for any damage caused to the property of the Lessee resulting from the Lessee's use thereof, and that any use that Lessee may make of such equipment shall be at his own cost, risk and expense.

Cars and Packages

31: The Lessor shall not be responsible for any damage to any automobile or other vehicle left in the care of any employee of the Lessor by the Lessee, and the Lessee hereby agrees to hold the Lessor harmless from any liability arising from any injury to person or property caused by or with such automobile or other vehicle while in the care of such employee. The Lessor shall not be responsible for any package or article left with or entrusted to any employee of the Lessor, or for the loss of any property within or without the apartment by theft or otherwise.

Written Notice Condition Precedent to Bringing Action Against Lessor

32: The giving of written notification by the Lessee to the Lessor in the manner provided in paragraph 27 hereof, in the event of (i) any default by the Lessor, or (ii) any breach by the Lessor of any covenant of this lease, or (iii) any failure by the Lessor to comply with any law, ordinance or governmental regulation, shall be a condition

precedent to the bringing of any action by the Lessee against the Lessor or the assertion by the Lessee against the Lessor of any defense based thereon.

Window Cleaning

33: The Lessee will not clean, nor require, permit, suffer or allow any window in the apartment to be cleaned, from the outside in violation of Section 202 of the Labor Law or of the rules of the Board of Standards and Appeals, or of any other board or body having or asserting jurisdiction.

Expiration of Lease

34: If upon, or at any time after, the happening of any of the events mentioned in subdivisions (a) to (h) inclusive of this paragraph, the Lessor shall give to the Lessee a notice stating that the term hereof will expire on a date at least five days thereafter, the term of this lease shall expire on the date so fixed, as if that were the date originally fixed for its expiration, and all right, title and interest of the Lessee hereunder shall thereupon cease and expire, and the Lessee shall thereupon quit and surrender the apartment to the Lessor, it being the intention of the parties hereto to create hereby a conditional limitation, and thereupon the Lessor shall have the right to re-enter the apartment and to remove all persons and personal property therefrom, either by special proceeding, or by any suitable action or proceeding at law or in equity, or by force or otherwise, and to repossess the apartment in its former estate as if this lease had not been made, and no liability whatsoever shall attach to the Lessor by reason of the exercise of the right of re-entry, re-possession and removal herein granted and reserved:

Lessee Ceasing to Own Accompanying Shares

(a) If at any time during the term of this lease the Lessee shall cease to be the owner of all of the shares which are hereinbefore stated to be owned by the Lessee and appurtenant to this lease, or if this lease shall pass or be assigned to anyone who is not then the owner of all of said shares;

Lessee Becoming a Bankrupt

(b) If at any time during the term of this lease (1) the Lessee shall be adjudicated a bankrupt under the laws of the United States or the Lessee shall have committed any act of insolvency or bankruptcy; or (2) a receiver of all of the property of the Lessee shall be appointed under any provisions of the laws of the

State of New York, or under any statute of the United States, or any statute of any state of the United States and the order appointing such receiver shall not be vacated within thirty days; or (3) the Lessee shall make a general assignment for the benefit of creditors; or (4) this lease or the shares appurtenant hereto owned by the Lessee shall be duly levied upon under the process of any court whatever unless such levy shall be discharged within five days; or (5) this lease or the shares appurtenant hereto or any interest herein shall pass by operation of law or otherwise to anyone other than the Lessee herein named or a person to whom such Lessee has assigned this lease in the manner herein permitted (but this item (5) shall not be applicable if this lease or the shares appurtenant thereto shall pass to the distributees, executors or administrators of the Lessee in accordance with the provisions of this lease);

Assignment or Subletting

(c) If at any time there be an assignment or attempted assignment of this lease without full compliance with the requirements of paragraph 16 hereof, or if at any time there be any subletting or attempted subletting hereunder without full compliance with the requirements of paragraph 14 hereof, or if any unauthorized person shall be permitted to use or occupy the apartment, and, in the case of any such subletting or attempted subletting or unauthorized use or occupancy, the Lessee shall fail to cure such condition within ten days after written notice from the Lessor;

Default in Covenant

(d) If the Lessee shall default in the performance of any covenant or provision hereof by failing to pay any rent or other charge due for one month, or to perform any other covenant or obligation under the proprietary lease within one month after written notice thereof shall have been given by the Lessor; but where a default consists of failure to perform any act the performance of which requires any substantial period of time, then if within the said period of one month such performance is commenced and thereafter diligently prosecuted without delay or interruption, the Lessee shall have been deemed to have cured such default;

Lessee's Objectionable Conduct

(e) If at any time the Lessor shall determine, upon the affirmative vote of both four-fifths of the Board of Directors and the

holders of record of two-thirds or more of the shares of the Lessor then issued and outstanding, at meetings of both such directors and such shareholders duly called to take action on the subject, that because of objectionable and undesirable conduct on the part of the Lessee, or of a person dwelling in or visiting the apartment, the tenancy of the Lessee is undesirable. (Repeatedly to violate or disregard the house rules hereto attached or hereafter established in accordance with the provisions of this lease, or to permit or tolerate a person of dissolute, loose or immoral character to enter or remain in the Building or the apartment, shall be deemed to be objectionable and undesirable conduct);

Termination of All Proprietary Leases

(f) If at any time the Lessor shall determine, upon both the affirmative vote of two-thirds of its full Board of Directors and the affirmative vote of the record holders of at least four-fifths in amount of its shares then issued and outstanding, at meetings of both directors and shareholders duly called for that purpose, to terminate all proprietary leases;

Damage or Destruction

(g) If the Building shall be destroyed or if it shall be damaged and the Lessor's Board of Directors shall decide not to repair or rebuild as provided in paragraph 4 hereof;

Condemnation

(h) If at any time the Building or a substantial portion thereof shall be taken by condemnation proceedings.

Rights Upon Default

35: In the event that the Lessor resumes possession of the apartment either by action, proceedings or otherwise, because of the default by the Lessee in the payment of rent or additional rent or any part thereof, or on the expiration of the term under the provisions of paragraph 34, subdivisions (a), (b), (c), (d) or (e) hereof, the Lessee shall nonetheless continue liable hereunder and shall pay to the Lessor on the several rent days during the residue of the lease term the rents and sums agreed to be paid by the Lessee, plus all expenses incurred by Lessor (whether or not paid) in connection with the resumption of possession, attempts to relet and reletting, including attorneys' fees and disbursements, brokerage, alterations, repairs, decoration and cleaning. No suit brought to recover any instalment of rent shall prejudice the right of the Lessor to recover any subsequent instalment. After resuming possession the Lessor may, at its option from time to

time, either relet the apartment for its own account or relet the apartment as agent of the Lessee either in the name of the Lessee or in its own name, for a term or terms which may be less or greater than the period which would otherwise have constituted the residue of the lease term and may grant concessions or free rent in its discretion. Within 30 days after such reletting of the apartment the Lessor shall notify the Lessee whether such reletting has been for the account of the Lessee or the Lessor. Failure of the Lessor so to notify the Lessee shall be deemed an admission that the reletting was for the account of the Lessor. The fact that the Lessor may have relet as agent for the Lessee shall not bar the Lessor thereafter from reletting the premises for its own account. If the Lessor relets the apartment as agent for the Lessee, it shall after reimbursing itself for its expenses in connection therewith and for all other expenses above mentioned, apply the remaining avails of such reletting against the Lessee's continuing obligations hereunder. In any action brought by the Lessor against the Lessee for rent or other expenses due after the resumption of possession, the Lessee shall be entitled to a credit on account thereof for the avails, if any, of relettings by Lessor as agent for the Lessee. There shall be a final accounting between the Lessor and Lessee upon the earliest of the four following dates: (i) the date of the expiration of the term hereof; (ii) the date as of which a new proprietary lease covering the apartment shall have become effective; (iii) the date when the Lessor shall relet the apartment for its own account; (iv) the date upon which all proprietary leases of the Lessor terminate. From and after the date on which the Lessor is obligated to account finally to the Lessee as above provided, the Lessor shall have no further duty to account to the Lessee and the Lessee shall have no further liability for sums thereafter accruing, but termination of the Lessee's liability shall not affect any liabilities theretofore accrued. On such accounting the Lessee shall be entitled out of any surplus remaining from such reletting, after the Lessor is made whole, to a refund of all rents paid by the Lessee to the Lessor for the period of the accounting, without interest.

Lessor's Additional Remedies

36: In addition to other legal remedies hereinbefore or hereinafter provided for, in case of violations of any covenants by the Lessee, the same shall be restrainable by injunction and neither the mention

herein nor the election hereafter of one or more of the remedies provided shall preclude the Lessor from any other remedy.

Waiver of Right of Redemption

37(a): The Lessee hereby expressly waives any and all right of redemption in case the Lessee shall be dispossessed. The words "enter," "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning.

Waiver of Trial by Jury

(b): To the extent permitted by law, the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this lease, the Lessee's use or occupancy of the apartment, the Lessee's interest as shareholder of the Lessor, or any claim of damage resulting from any act or omission of the parties in any way connected with this lease or the apartment.

Surrender of Shares and Resale Thereof by Lessor

38: On the termination of this lease under subdivision (a), (b), (c), (d) or (e) of paragraph 34, the Lessee shall surrender to the Lessor the certificate or certificates for the shares of the Lessor owned by the Lessee and appurtenant to this lease. Whether or not said certificate or certificates are surrendered, the Lessor shall issue a new proprietary lease for the apartment and issue a new share certificate for the shares of the Lessor owned by the Lessee and allocated thereto when a purchaser therefor is found. Upon such issuance the share certificate owned or held by the Lessee shall be automatically cancelled and rendered null and void. The Lessor shall apply the proceeds received from the issuance of such shares as provided in paragraph 35 hereof.

Lessee's Option to Cancel

39: This lease may be cancelled by the Lessee on September 30, 1970, or on any September 30 thereafter, upon the Lessee's complying with all the provisions of this paragraph. Irrevocable written notice of intention to cancel must be served by the Lessee upon the Lessor on or before March 31st in the calendar year in which such cancellation is to occur and all other conditions in this paragraph must be complied with by the Lessee:

Deposits Required

(a): At the time of the service of such notice of intention to cancel there must be deposited with the Lessor by the Lessee:

(1) a proper assignment of the Lessee's counterpart of this lease whereby the full and absolute right, title and interest in and to this lease is assigned as the Lessor may direct, as of September 30 of the year of cancellation, free from all subleases, liens, encumbrances and charges whatsoever;

(2) the Lessee's certificate for the shares of the Lessor appurtenant to this lease, duly endorsed in blank for transfer with required revenue stamps affixed; and

(3) a written statement setting forth in detail those additions, improvements and fixtures, such as mantels, lighting fixtures, refrigerators, ranges, air conditioning equipment, woodwork, panelling, ceilings, doors and decorations, in the apartment which the Lessee has, under the terms of this lease, the right to remove, and which the Lessee desires to remove;

Removal of Fixtures, Restoration of Premises and Possession

(b): All additions, improvements and fixtures which are removable under the terms of this lease and which are enumerated in the statement made as provided in subdivision (a)(3), shall be removed by the Lessee and the premises restored as provided in paragraphs 20 and 21 prior to the 31st day of August next preceding the date fixed in said notice as the date for the cancellation of this lease, and on or before said 31st day of August the Lessee shall deliver possession of the apartment to the Lessor free from all occupants, subleases, liens, encumbrances or other charges and pay to the Lessor all rent, additional rent and other charges which shall be payable under this lease up to and including the 30th day of September next succeeding such 31st day of August;

Permission to Show and Occupy Premises

(c): The Lessor and its agents may show the apartment to prospective lessees or purchasers at any time and from time to time after the giving of notice of the Lessee's intention to cancel this lease, and after the 31st day of August next succeeding the date on which such notice of intention to cancel is given, the Lessor and its agents, employees, lessees and purchasers may enter the apartment, occupy the same, and make such alterations, additions and repairs therein as may be necessary or desirable, without diminution or abatement of the rent due hereunder;

(d): On the date fixed in said notice as the date for the cancellation of this lease, this lease shall be cancelled and all rights, duties and obligations of the parties hereunder shall cease, terminate and expire as of said date and said shares of the Lessor shall become the absolute property of the Lessor, provided, however, that the Lessee shall not be released or discharged from any indebtedness owing from the Lessee to the Lessor on said last mentioned date, and provided further, that if the Lessee shall fail to do any of the things or make any of the payments at the time, in the amounts and in the manner required by this subdivision, or shall otherwise be in default under this lease, the Lessor shall have the option of (i) returning to the Lessee this Lease, the share certificate and other documents deposited, and thereupon the Lessee shall be deemed to have withdrawn the notice of intention to cancel this lease; or (ii) treating this lease as cancelled as of the 30th day of September named in said notice, and bringing such proceedings and actions as it deems best to enforce the covenants of the Lessee herein contained;

Cancellation of Lease Rights on Lessee's Default

(e): If on April 1st in any year the total number of shares owned by lessees holding proprietary leases, who have given notice of intention to cancel such proprietary leases on the 30th day of September next succeeding, shall aggregate ten percent (10%) or more of the Lessor's then issued and outstanding shares, then the Lessor shall, prior to April 15th in such year, mail a written notice to the holders of the remaining shares of the Lessor then issued and outstanding, stating the total number of shares then in its treasury and the total number of shares owned by lessees holding proprietary leases who have given notice of intention to cancel. In such case the proprietary lessees to whom such notice shall have been given shall have the right to cancel their leases in compliance with the provisions of this paragraph, provided only that written notice of intention to cancel such leases may be mailed on or before June 1st instead of April 1st as in this paragraph stated;

Extension of Option to Cancel

(f): If lessees owning at least 80% of the then issued and outstanding shares of the Lessor shall exercise the option to cancel their leases, then this and all other proprietary leases shall thereupon terminate on the 30th day of September of the year in which

Exercise of Option by 80% of Shareholders

such options shall have been exercised, as though every lessee had exercised such option. In such event none of the lessees shall be required to surrender his shares to the Lessor and all share certificates delivered to the Lessor by those who have, during that year, served notice of intention to cancel their leases under the provisions of this paragraph, shall be returned to such lessees.

Transfer of Shares

40: The shares of the Lessor held by the Lessee and appurtenant to this lease have been acquired and are owned subject to the following conditions agreed upon with the Lessor and with each of the other proprietary lessees for their mutual benefit:

(a): The shares represented by each certificate are transferable only as an entirety and simultaneously with the transfer of the proprietary lease to which they are appurtenant;

(b): Neither the Lessee nor the Lessee's personal representatives shall sell or transfer said shares except to the Lessor or to an assignee of this lease after compliance with all of the provisions of paragraph 16 of this lease relating to assignments;

(c): The Lessor shall at all times have a first lien upon the shares owned by each lessee for all indebtedness and obligations owing by such lessee to the Lessor arising under the provisions of any proprietary lease issued by the Lessor and at any time held by such lessee or otherwise arising. The Lessor may refuse to consent to the transfer of shares of any lessee indebted to the Lessor unless and until such indebtedness is paid;

(d): The Lessor shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof, and accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, other than executors or administrators of the Lessee, whether or not it shall have express or other notice thereof, except as expressly provided by the laws of New York;

(e) No shares will be outstanding which are not held by proprietary lessees. The right to vote such shares shall cease when the proprietary lease to which such shares are allocated is no longer in effect and such apartment is no longer under lease to the proprietary lessee.

Exhibit B, Proprietary Lease.

41: The references herein to the Lessor shall be deemed to include its successors and assigns, and the references herein to the Lessee or to a shareholder of the Lessor shall be deemed to include the executors, administrators, legal representatives, legatees, distributees and assigns of the Lessee or of such shareholder; and the covenants herein contained shall apply to, bind and enure to the benefit of the Lessor and its successors and assigns, and the Lessee and the executors and administrators, legal representatives, legatees and assigns of the Lessee, except as hereinbefore stated. **To Whom Covenants Apply**

42: The provisions of this lease can be changed only by a written agreement executed by the parties hereto and approved in writing by or after affirmative vote of (at a meeting called for such purpose) lessees owning at least two-thirds in amount of the Lessor's shares. **Changes to be in Writing**

43: If more than one person is named as Lessee hereunder, the Lessor may require the signatures of all such persons in connection with any notice to be given or action to be taken by the Lessee hereunder, including, without limiting the generality of the foregoing, the surrender or assignment of this lease, or any request for consent to assignment or subletting. Each person named as Lessee shall be fully liable for all of the Lessee's obligations hereunder. Any notice by the Lessor to any person named as Lessee shall be sufficient, and shall have the same force and effect as though given to all persons named as Lessee. **Lessee More Than One Person**

44: Lessor or Lessor's agents have made no representations or promises with respect to the Building or the apartment, except as herein expressly set forth, and the Lessee hereby accepts the same "as is" and hereby acknowledges that the apartment, and the Building, are in good and satisfactory condition. **Lessee Accepts Apartment "As is"**

45: Whenever the consent or approval of the Lessor, or of the Board of Directors, is required, the same shall not be valid or binding unless given in writing and signed by a duly authorized agent of the Lessor or of the Board, as the case may be. **Consent**

46: If any clause or provision herein contained shall be adjudged invalid, the same shall not affect the validity of any other clause or **Effect of Partial Invalidity**

provision of this lease, or constitute any cause of action in favor of either party as against the other.

House Rules

47: The Lessor may from time to time establish such reasonable house rules as its Board of Directors or shareholders may deem necessary for the management and control of the Building, and may also from time to time add to, amend and repeal such rules, and this lease shall be in all respects subject to such rules, which, when a copy thereof has been furnished to the Lessee, shall be taken to be part hereof, and the Lessee shall obey all such rules and see that they are faithfully observed by the family, guests, employees and under-tenants of the Lessee, and such rules shall apply to and be binding upon all of the tenants of the Building, whether shareholders of the Lessor or not, but the Lessor shall not be responsible to the Lessee for the non-observance or violation of such rules by any other lessee or person other than employees of the Lessor.

Headings

48: The marginal headings next to the several paragraphs of this lease shall not be deemed a part of this lease, nor used as evidence of the intent of the parties.

Termination of Cooperative Ownership

49: On the termination of all proprietary leases, whether by expiration of their terms, or otherwise, the Building and premises and the other assets of the Lessor shall be operated and managed and disposed of in such manner as shall seem proper to the Board of Directors who shall, if two-thirds of the shareholders fail to vote for the renewal of proprietary leases, then have the discretion to alter or demolish the Building, to lease or sell the same or any part thereof and for any purpose, or to operate a business therein and all of the holders of then issued and outstanding shares of the Lessor shall have such rights as enure to shareholders of other corporations having title to real estate, and the same shall be operated from and after that date as though it had not previously been a cooperative housing corporation, provided, however, that a meeting of all shareholders shall be held not later than one week after the termination of all such leases at which the Directors shall be instructed by the vote of the holders of two-thirds of the shares as to the future management and operation of the corporate property and appropriate amendments to the certificate of incorporation and by-laws.

IN WITNESS WHEREOF, the Lessor has caused its corporate seal to be hereto affixed and this instrument to be signed by its duly authorized officer, and the Lessee has executed this instrument under seal, the day and year first above written.

1050 TENANTS CORP.

By .....
President.

.....
Lessee.

.....
Lessee.

Exhibit B, Proprietary Lease.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the day of , in the year 19 , before me personally appeared , to me known, who being by me duly sworn, did depose and say that he resides at ; that he is the President of 1050 TENANTS CORP., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On the day of , in the year 19 , before me personally appeared , to me personally known and known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

Exhibit B, Proprietary Lease.

HOUSE RULES

ONE. The public halls and stairways shall not be obstructed or used for any other purpose than ingress to and egress from the apartments, and the fire towers shall not be obstructed in any way.

TWO. Children shall not play in the public halls, stairways or elevators, and shall not be permitted in the service elevators.

THREE. No public hall shall be decorated by any lessee in any manner without the prior consent of the Lessor and of all of the lessees to whose apartments such hall serves as a way of ingress and egress.

FOUR. No lessee, subtenant or occupant of an apartment shall make or permit any disturbing noises in the building or do or permit anything to be done therein which will interfere with the rights, comforts or conveniences of other occupants of the building. No lessee shall play upon or suffer to be played upon any musical instrument or permit to be operated a phonograph, television or a radio loud speaker in such lessee's apartment between the hours of 11 o'clock P. M. and the following 9 o'clock A. M. if the same disturb or annoy other occupants of the building, and in no event shall either vocal or instrumental music be practiced for more than two hours in any day or between the hours of 6 o'clock P. M. and the following 9 o'clock A. M. To reduce sound emanating from any apartment, Lessee shall cover the floors of any living room, dining room and bedroom with carpet.

FIVE. Each apartment shall be kept clean. Nothing shall be swept or thrown therefrom or from the doors, windows, terraces or balconies thereof.

SIX. Nothing shall be placed in the halls or on the staircase landings or fire towers, nor shall anything be hung or shaken from the doors, windows, terraces or balconies or placed upon the window sills.

SEVEN. No shades, awnings or window guards shall be used except such as shall be approved by the Lessor.

Exhibit B, Proprietary Lease.

EIGHT. No sign, notice, signal, advertisement or illumination shall be placed, inscribed or exposed on or at any window or other part of the building, either inside or outside, except such as shall have been approved in writing by the Lessor.

NINE. The passenger and service elevators, unless of automatic type and intended for operation by a passenger, shall be operated only by employees of the Lessor and there shall be no interference whatever with the same by lessees or members of their families or their guests, employees or under-tenants.

TEN. No velocipedes, bicycles, scooters, baby carriages, or similar vehicles shall be allowed to stand in the public halls, passageways, upstairs elevator lobbies, areas or courts.

ELEVEN. All messengers and trades people shall use the service elevator in the Building for ingress and egress and shall not use the passenger elevator for any purpose. Servants or domestic employees in the regular employ of any lessee or sub-tenant may use the passenger elevator when not attired in work clothes or carrying packages, when not engaged in the performance of their duties, when coming to or leaving from work or when accompanying a member of the family of the lessee or sub-tenant, but shall at all other times use the service elevator.

TWELVE. Supplies and packages of every kind are to be delivered only through the service entrance and by the service elevators to the apartments.

THIRTEEN. Trunks and heavy baggage shall be taken in or out of the building through the basement.

FOURTEEN. Garbage and refuse from the apartments shall be sent to the basement or placed outside of apartments only at such times and in such manner as the superintendent may direct.

FIFTEEN. Water-closets and other water apparatus in the building shall not be used for any purpose other than those for which they were constructed, nor shall any sweepings, rubbish, rags or any other

article be thrown into the same. Any damage resulting from misuse of any water-closets or water apparatus shall be paid for by the Lessee in whose apartment it shall have occurred.

SIXTEEN. No employee of the Lessor shall be sent out of the building on any personal errand or business.

SEVENTEEN. No bird or animal shall be kept in any apartment unless the same in each instance be expressly permitted in writing by the Lessor. In no event shall dogs be permitted on elevators or in any of the public portions of the building unless carried or on leash.

EIGHTEEN. No radio or television aerial shall be attached to or hung from the exterior of the building, and no air-conditioning unit or ventilating fan shall be installed without written permission of the Lessor, other than existing installations.

NINETEEN. Any consent or approval given under these rules by the Lessor shall be revocable at any time.

TWENTY. Complaints regarding the service of the building shall be made in writing to the the managing agent of the Lessor.

TWENTY-ONE. The Lessor may retain a pass key to the apartment. The Lessee shall not alter any lock or install a new lock or a knocker on any door of the apartment without the written consent of the Lessor or its managing agent. In case such consent is given, the Lessee shall provide the Lessor with an additional key for the use of the Lessor pursuant to the Lessor's right of access to the apartment.

TWENTY-TWO. The agents of the Lessor, and any contractor or workman authorized by the Lessor, may enter any apartment at any reasonable hour of the day for the purpose of inspecting such apartment to ascertain whether measures are necessary or desirable to control or exterminate any vermin, insects or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects or other pests. If the Lessor

takes measures to control or exterminate carpet beetles, the cost thereof shall be payable, by the Lessee, as additional rent.

TWENTY-THREE. The Lessor shall have the right from time to time to curtail or re-locate any space devoted to storage or laundry purposes.

TWENTY-FOUR. These house rules may be added to, amended or repealed at any time by resolution of the Board of Directors of the Lessor or at a meeting of the shareholders of the Lessor.

Opinion of District Court, Denying Defendants' Motion to Dismiss.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

APPEARANCES:

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OPINION

STEWART, DISTRICT JUDGE:

This action is brought by 1050 Tenants Corporation ("the Corporation"), a cooperative housing corporation, and Herbert and Joan Saltzman, purchasers and holders of shares in the Corporation, as representatives of a class consisting of all past and present shareholders. The complaint alleges that the defendants, sponsors and promoters of the cooperative plan pursuant to which the Corporation was organized and shares offered and sold, violated pro-

visions of federal[1] and state[2] securities laws and regulations by making false and misleading statements and omissions in connection with and in the course of issuance of the shares.

Defendants deny the substantive allegations of the complaint and also move to dismiss it under Rule 12(b)(1) and (6). Federal Rules of Civil Procedure, on the grounds that plaintiffs fail to state a claim upon which relief can be granted, and that therefore this Court lacks subject matter jurisdiction. Defendants argue that shares in a cooperative housing corporation are not "securities" within the definition contained in the federal securities laws and regulations, and that therefore plaintiffs state no federal cause of action in Counts One, Two or Three. Dismissal of these counts would of course require dismissal of Counts Four and Five, the pendent state claims.

Thus, the dispositive question on the motion to dismiss presently before this Court is: are the shares of the plaintiff Corporation "securities" under the federal securities laws? If so, plaintiffs have stated valid federal causes of action; if not, plaintiffs' complaint must be dismissed.

This Court denies defendants' motion to dismiss. We find that the shares of stock in plaintiff Corporation are "securities" within the definition of the federal securities laws, and that those laws govern the transactions involved in this action.

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[1] Count one: Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and Rule 10b-5 (17 C.F.R. § 240.10b-5); Count two: Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); Count three: Section 12(2) of the Securities Act of 1933, 15 U.S.C. § 77*l*(2). ("the federal counts" or "federal causes of action").

[2] Count four: Section 353-c of the New York General Business Law; Count five: common law fraud. ("the pendent state claims").

Opinion of District Court, Denying Defendants' Motion to Dismiss.

Facts

The plaintiff Corporation was formed by the defendants pursuant to New York Business Law § 402. In May, 1968, defendants made a public offering of the corporate stock by formal prospectus, or "Plan," as is required by state law, of all offerings of "securities constituted of participation interests or investments in real estate. . . ."[3] Ownership of shares of stock entitled purchasers to proprietary leases in apartments at 1050 Park Avenue.

As provided in the Plan, the Corporation had an authorized capital of 45,000 shares at $1.00 par value per share. 42,400 shares were allotted to the approximately 60 residential apartments offered under the Plan, according to the contemplated selling price of each apartment. (Plan pp. 3, 10)[4] It was contemplated that the apartments not offered for residential use would be rented out by the Corporation as doctors' offices, the income therefrom to be income to the Corporation. (Plan p. 3). Such income would be used to offset and reduce the periodic assessments on shareholders for maintenance of the building.

The Plan required each shareholder to execute and conform to a uniform proprietary lease. The lease contained prohibitions on subletting or assigning without the consent of the Corporation, as well as restrictions on partial transfer of shares or separate ownership of the lease and shares. (Plan pp. 11-12)

On the Closing Date, according to the Plan, the defendants were required to turn over title to the apartments sold to the Corporation, and stock certificates to the share-

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[3] New York General Business Law § 352e (McKinney 1968).

[4] Citations in this form are to the Amended Plan of Cooperative Organization, Defendant Emil's Affidavit, Exhibit C.

holders. (Plan pp. 24-25) The Plan authorized the defendants to retain control of the shares and leases in apartments not sold by the Closing Date. In fact, by the closing on January 30, 1969, all of the apartments had been sold, and title to the property was conveyed to the Corporation by the defendants, who received payment from the proceeds of the sale of shares and leases.

At the closing, the Corporation also assumed pursuant to the Plan several obligations made by the defendants: a three-year agreement making Pease & Elliman, Inc., defendants' sales agent, the Managing Agent of the building, at a fee of $9,000 per year (Plan p. 25); at least eight other service management contracts, including one with an electrical service company for certain electrical installations in the building at a cost of $17,065 (Plan, pp. 5-6, Schedule I); and two mortgages (Plan pp. 20-23).

The shareholders-lessees were to, and did, meet to elect a Board of Directors to manage the Corporation's affairs. In such election, as is usual in corporate decisions in which the shareholders have a voice, each share was entitled to one vote.

Legal Principles

The definitions of "securities" under the 1933 Securities Act[5] and the 1934 Securities Exchange Act[6] are almost identical, and the Supreme Court has found them to be interchangeable in this situation[7].

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[5] Securities Act of 1933, § 2(1), 15 U.S.C. § 77b(1).

[6] Securities Exchange Act of 1934, § 3(a)(10), 15 U.S.C. § 78c(a)(10).

[7] *Tcherepnin* v. *Knight*, 389 U.S. 332 (1967); S. Rep. 792, 73d Cong., 2d Sess. 14 (1934).

§ 3(a)(10) of the 1934 Act provides:

> 3. (a) When used in this chapter, unless the context otherwise requires—(10) The term "security" means any note, stock treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, or in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interm certificate for receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.[8]

Plaintiffs assert that the corporate scheme in this action should be treated like any other under the federal securities laws. They put forth two theories under which the shares in the Corporation may fall within the above definition. First, they urge that "any . . . stock" means, literally, any stock; and that the use of stock certificates, actually sold and delivered, within a traditional corporate format is dispositive. Second, and alternatively, they urge that the shares in the Corporation be deemed an "investment contract" under the statutory definition, since the traditional three-prong test for an investment contract

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[8] 15 U.S.C. 78c(a)(10).

established by the Supreme Court in *Securities and Exchange Commission* v. *Howey Co.*[9] is satisfied.

Defendants counter that the courts have always looked to the content and economic realities and not the form to characterize a transaction, and that the mere fact that stock certificates are used as a "mechanical vehicle" to allow the purchasers to own their residences and gain tax benefits is not determinative. They argue that the purchasers intended to buy homes, not investments, and that therefore this is not the commercial type of transaction intended to be covered by the securities laws. As to the "investment contract" theory, defendants dispute that the Corporation's shares meet the *Howey* test.

This is essentially a question of first impression. Judge Pierce, of this District, has recently decided, in a scholarly and comprehensive opinion, that shares in a state-financed and supervised, non-profit cooperative housing corporation were not "securities" under the federal laws.[10] We point out, however, that the elements of state control and non-profit make that case materially different from the one at bar, as Judge Pierce himself recognized. The parties have not cited, and we have not uncovered, any other federal court decision on this point.

We find that the definitions of "securities" in the 1933 and 1934 Acts and their judicial interpretations, are sufficiently broad so as to include the shares of plaintiff Corporation, under either theory propounded by plaintiffs. We express no view on the merits of plaintiffs' allegations.

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[9] 328 U.S. 293, 298-299 (1946). The arrangement must be. 1) a common enterprise; 2) where the investor has an expectation of profits; and 3) from the efforts of the promoter or a third party. *Infra* at p. 12.

[10] *Forman* v. *Community Services, Inc.*, 72 Civ. 3980 (S.D.N.Y. September 6, 1973) (hereinafter *Forman*).

Opinion of District Court, Denying Defendants' Motion to Dismiss.

I

The interpretation of the term "any . . . stock" in § 3(a)(10) is considered first.

The Supreme Court has given some indication that the issuance of stock certificates within a traditional corporate structure may be dispositive. In *Securities and Exchange Commission* v. *Joiner*,[11] the Court, finding that the oil leases at issue fell within the securities laws, said,

> In the Securities Act the term "security" was defined to include by name or description many documents in which there is a common trading for speculation or investment. Some, such as notes, bonds, *and stocks*, are pretty much standardized and the name alone carries a well-settled meaning. Others are of more variable character and were necessarily designated by more descriptive terms, such as "transferable shares," "investment contract," and "in general any interest or instrument commonly known as a security" . . . Instruments may be included within any of these definitions, as matter of law, if on their face they answer to the name or description. (emphasis added)[12]

It was apparently these words that Judge Mansfield was heeding when he decided *Movielab, Inc.* v. *Berkey Photo, Inc.*[13] Although that case dealt with the provision including "any note" within the definition of "securities", there is no reason to conclude that Judge Mansfield's words do not apply

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[11] 320 U.S. 344 (1943).

[12] 320 U.S. at 351.

[13] 321 F. Supp. 806 (S.D.N.Y. 1970) *aff'd.* 452 F.2d 662 (2d Cir. 1971).

equally to the "any . . . stock" provision:

> There is no ambiguity in the language [of the statute]. Nor does a literal reading of the language defeat or hamper Congress' apparent purpose. We cannot therefore say that Congress did not intend to legislate with respect to fraud in the issuance of promissory notes of the type here involved.
>
> Try as we may, we fail to detect in the 1934 Act any grant of discretionary power to the court to construe the term "security" as including certain types of notes but not others. Congress apparently decided that it would pass a sweeping prohibition rather than attempt to draw distinctions. We are bound by that decision.[14]

The legislative history is sparse, and somewhat circular. To the extent it can be discerned, it is expansive in scope. The definition of "security" is deemed "sufficiently broad and general . . . so as to include . . . the many types of instruments that in our commercial world fall within the ordinary concept of a security.[15]

The position of the Securities and Exchange Commission, were it certain, would weigh on this Court's judgment.[16] Rule 235a(a)[17] exempts from registration under certain conditions "[s]tock or other securities representing membership in any cooperative housing corporation".

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[14] 321 F. Supp. at 809. *See also Llanes* v. *United States*, 295 F.2d 852 (9th Cir. 1953) *cert. denied* 348 U.S. 923 (1954); *Lehigh Valley Trust Co.* v. *Central Nat'l. Bank of Jacksonville*, 309, 991-993 (5th Cir. 1965).

[15] F. Rep. 53, 1050 Corp., 1st Dept. 21 (1933).

[16] *Securities and Exchange Commission* v. *Associated Gas & Elec. Co.*, 39 F.2d 135, 150 (2d Cir. 1925).

[17] 11 C.F.R. § 252.235(a) (1973).

Plaintiff argues that if the Securities and Exchange Commission did not feel that such stock or securities were within federal law generally (including specifically the anti-fraud provisions), there would be no need to exempt certain of them from the registration provisions. In light of the Securities and Exchange Commission's recent statement on "condominium units or other units in a real estate development"[18] this Court is not convinced that the Securities and Exchange Commission has a firm position as to cooperative housing corporations. We therefore give the negative implications which can be drawn from Rule 235(a) some, but no means controlling, weight.

We repeat that plaintiff Corporation is organized under the state Business Corporation Law, and has issued shares of stock, which, including certain transfer restrictions, are no different than shares in other New York business corporations.

Aside from urging this Court to look to the primary purpose of the transaction (which, they argue, is home ownership), defendants offer no persuasive reasons why the phrase "any . . . stock" is, or should be, read restrictively. We do not agree with defendants that the Supreme Court has applied that provision restrictively. Neither *Tcherepnin* v. *Knight, supra,* nor *S.E.C.* v. *Howey Co., supra,* speak at all to the "any . . . stock" provision of § 3(a)(10), but rather construe the term "investment contract". In neither of those

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[18] S.E.C. Release No. 5347, Jan. 4, 1973, Fed. Sec. L. Rep. 779, 163 (Trans. Binder 1973). The S.E.C. suggests that shares in such units *may* be considered securities if certain conditions are met; for example, where benefits are accrued from efforts of a promoter or third party (See II B, *infra*). If reference to "other units in a real estate development" includes cooperatives, this suggestion belies the effort to characterize the S.E.C.'s position as one in which shares in cooperative housing corporations are always, by definition, securities.

cases, nor in any other case cited to us by the defendants, has a federal court, faced with a similar corporate structure, limited the plain language of § 3(a)(10).[19]

Therefore, we find that the consistently liberal and broad interpretation given to the provisions of the federal securities laws,[20] and the absence of restriction, legislative or judicial, on the term "any . . . stock," requires a finding that shares issued in the plaintiff Corporation are "securities" under the federal laws.

II

Alternatively, we find that the corporate scheme in this case falls under the "investment contract" provision of § 3(a)(10) of the 1934 Act and § 2(1) of the 1933 Act, as interpreted by the Supreme Court in *Securities and Exchange Commission* v. *Howey Co., and later cases.*[21]

The *Howey* Court established a three-prong test based on the economic realities of each transaction:

> . . . an investment contract for the purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enter-

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[19] In *Ashton* v. *Thornton Realty Co.*, 346 F. Supp. 1294 (S.D.N.Y. 1972) *aff'd.* 471 F.2d 647 (2d Cir. 1973), Judge Lasker found for defendants on the merits in a cooperative housing corporation case without mention of this arguably serious jurisdictional obstacle. In *Davenport* v. *United States*, 260 F.2d 591 (9th Cir. 1958), a criminal case, that court also did not discuss the issue, apparently accepting a share in an employment cooperative as a security.

[20] *E.g., S.E.C.* v. *Howey Co., supra; Tcherepnin* v. *Knight, supra.*

[21] *E.g., Tcherepnin* v. *Knight, supra; S.E.C.* v. *Variable Annuity Co.*, 359 U.S. 65 (1959).

> prise and is led to expect profits solely from the efforts of the promoter or a third party . . .[22]

Both parties concede, as they must, that there was a common enterprise involved in the creation of 1950 Tenants Corporation. The latter two prongs of the *Howey* test raise dispute—expectation of profits and reliance on the efforts of the promoter or a third party.

A. Expectation of profits.

Defendants argue that since the primary purpose of the shareholders' purchase was home ownership, rather than investment, there was no expectation of profits.

The *Howey* test looks to the substance of the transaction and of the relationship between the issuer and security holder. We cannot, however, probe deep into the minds of each purchaser to discern whether there was, in fact, expectation of profits from the purchase, and whether that was the primary motive, or not. Nor must we accept at face value, as defendants suggest, the statement of purpose contained in the Plan. After examining this transaction, we can say that there are at least three factors which indicate the possibility or likelihood of profit which the shareholders of plaintiff Corporation could have anticipated:

1. Resale of shares at a profit. The shares cannot be transferred without the lease, nor without the consent of the Corporation (Plan p. 12). However, there are no provisions, as there were in the *Forman* situation,[23] pro-

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[22] 328 U.S. at 298-299, 66 S.Ct. at 1103.

[23] 72 Civ. 3980 (S.D.N.Y. 1973) Slip Op. at 7-8.

hibiting transfer of shares at a price higher than the shareholder originally paid, nor any provision giving the Corporation right of first refusal. While transfer of shares is restricted, it is not so encumbered as to preclude the possibility of profit.[24] To contend that the purchasers of plaintiff Corporation stock did not intend to make a profit is to engage in the type of mind-probing speculation we find unhelpful and unnecessary.

2. Tax benefits. One of the attractions of this type of home ownership are the tax benefits which accrue to the shareholders[25] (Plan pp. 17-18). Defendants argue, however, that these monetary benefits are incidents of home ownership, rather than investment. We fail to see the pertinence of that line of argument. Apartment dwellers in 1050 Park Avenue were regularly making rental payments without being allowed to deduct them from their federal income tax. When defendants convinced these residents to incorporate, one of the reasons given was availability of tax deductions of their monthly maintenance charges. Such direct monetary benefit, by any other name, is still profit.

3. Income from professional offices. The space available for professional offices presented the likelihood of income to the Corporation. While this income would not result in dividends to the shareholders, but merely a re-

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[24] This point was the *ratio decidendi* of *Forman*, and the striking distinction between *Forman* and the case at bar. See also *Tscherepnin* v. *Knight*, *supra*, at 343, where the Supreme Court found that the fact that the shares were not negotiable was not relevant to the question of whether they were "securities" under § 3(a)(10).

[25] Internal Revenue Code § 216, 26 U.S.C. § 216; New York Tax Law § 615 (McKinney 1966).

duction in their monthly maintenance charges, this is merely a difference in degree, or quantity of profits, rather than a difference in kind.

In sum, purchasers had sufficient reason to expect monetary profit from this investment to satisfy the second prong of the *Howey* test.[26]

B. Reliance on others.

The more difficult question is whether or not the expected profits may accrue in this situation solely from the efforts of the promoter or a third party.

We approach this question solely in terms of economic reality, as defendants urge us to do. In *Forman* Judge Pierce found that the "massive size of Co-op City . . . [makes it] specious to argue that the cooperative ideal precludes the notion of management by third parties".[27]

We similarly find that the motion of sponsor involvement and management by third parties is not precluded in this case. We point to the following factors:

1. Defendant sponsors had complete control over initial financial arrangements and the general guidelines under which the Corporation still operates.

2. Although it did not come to pass, the Plan made provision for sponsor representation on the Board of Directors should the sponsors not have been able to sell all of the shares, and for sponsor veto over certain decisions

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[26] Since we so find, we need not go so far as to determine whether expectation of profit may be shown where plaintiffs can merely show risk of capital which is managed by others. *Silver Hills Country Club* v. *Sobieski*, 55 Cal. 2d 811, 361 P.2d (1961) (J. Traynor).

[27] Slip Op. at 20.

if sponsors, or their assignees, retained 25% of the shares (Plan pp. 10-11). There was also provision for continued sponsor involvement in the selling of shares over a four-year period after closing, if all shares had not been previously sold.

3. The defendant sponsors did obligate the Corporation to at least nine contracts, including one for the management of the building by an agent of the sponsors, which extended for three years past the time the shareholders were supposedly in complete control (Plan pp. 20, 25, Schedule I).

In its early and crucial stages, both prior to and for a period of time after closing, this investment was in the effective control of the defendant sponsors. The economic realities of this scheme are accurately reflected by the following observations:

> . . . the development stage—the investigation and selection of a site, the sale of fractional interests to investors, and the reliance on the promoter for information—should be the relevant period when considering who is exercising control. Moreover, even in the management stages, most of the important decisions have been conclusively made by the sponsor before the board of directors begins to function and are not subject to change. Such decisions include the allocation of shares, the financing arrangements, long-term commercial leases, and long-term service contracts. Indeed, the actual management is often provided for by a long-term management contract, again arranged by the sponsor (citations omitted).[28]

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[28] Note, Cooperative Housing Corporations and the Federal Securities Laws, 71 Col. I, Rev. 118, 128-129 (1971).

Opinion of District Court, Denying Defendants' Motion to Dismiss.

The offer and purchase of shares in plaintiff Corporation meets the third, and final, prong of the *Howey* test as an investment contract.

Either because shares in plaintiff Corporation constitute stock or because they constitute investment contracts under the federal securities laws, this Court has subject matter jurisdiction, and plaintiffs have stated a claim upon which relief can be granted. Defendants' motion to dismiss is denied.

IT IS SO ORDERED.

/S/ CHARLES E. STEWART, JR.
United States District Judge

Dated: New York, N. Y. October 11, 1973.

Memorandum Endorsed by Judge Stewart, Granting Defendant's Motion for Certification Pursuant to 28 U.S.C. § 1292(b) for Leave to Take an Interlocutory Appeal.

Defendant's application for an order amending this Court's order and opinion of October 11, 1973 to include the following is *granted:*

This court is of the opinion that the order of October 11, 1973, involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal may materially advance the ultimate termination of the litigation.

So ordered.

s/ CHARLES E. STEWART, JR.
U.S.D.C.
11/2/73

Order of the United States Court of Appeals Granting Defendants Leave to Take an Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b).

B 25

73-8393

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 30th day of November, one thousand nine hundred and seventy-three.

1050 TENANTS CORP., HERBERT SALTZMAN and JOAN SALTZMAN,

Plaintiffs-Appellees,

v.

PETER JAKOBSON, JOHN R. JAKOBSON, ARTHUR D. EMIL and LAWRENCE A. KOBRIN,

Defendants-Appellants.

It is hereby ordered that the motion made herein by counsel for the petitioners for leave to appeal pursuant to USC § 1292(b) and Rule 5(a) of the Federal Rules of Appellate Procedure be and it hereby is granted.

J. EDWARD LUMBARD

WALTER R. MANSFIELD

WILLIAM H. MULLIGAN

Circuit Judges

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appellees